

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

BRIAN A., et al.	)	
	)	
Plaintiffs,	)	Civ. Act. No. 3:00-0445
	)	Judge Todd J. Campbell
v.	)	Magistrate Judge Joe B. Brown
	)	
BILL HASLAM, et al.	)	
	)	
Defendants.	)	

**DECLARATION OF IRA LUSTBADER IN SUPPORT OF PLAINTIFFS’  
MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION FOR ACCESS TO  
INFORMATION REGARDING CHILD FATALITIES NECESSARY TO ENSURE  
COMPLIANCE WITH THE BRIAN A. EXIT PLAN**

I, Ira Lustbader, do hereby declare as follows:

1. I am the Associate Director of Children’s Rights, 330 Seventh Avenue, New York, NY 10001, and am one of Plaintiffs’ counsel in this lawsuit. I make this declaration in support of Plaintiffs’ Motion for Access to Information Regarding Child Fatalities Necessary to Ensure Compliance with the *Brian A.* Exit Plan. I have personal knowledge of the facts stated below.

2. At an in-person meeting in Nashville on September 5, 2012, the parties discussed the subject of performance issues, including recent child deaths in Tennessee. During that meeting, Plaintiffs requested, and the Commissioner and her staff agreed to provide, records regarding children who died while in DCS custody or with a history of contact with DCS, including any federal or state statutorily mandated reviews and any DCS internal reviews.

3. The documents were not produced prior to the parties' subsequent in-person meeting on October 24, 2012, so Plaintiffs followed up at that meeting and the Commissioner and her team again agreed to provide the documents.

4. On November 12, 2012, Plaintiffs sent a letter to Defendants requesting production of the documents. A true and correct copy of that document is attached hereto as Exhibit A.

5. On November 13, 2012, Defendants sent an email to Plaintiffs regarding Plaintiffs' document request. A true and correct copy of that document is attached hereto as Exhibit B.

6. On November 13, 2012, Plaintiffs sent an email to Defendants regarding Plaintiffs' document request. A true and correct copy of that document is attached hereto as Exhibit C.

7. On November 19, 2012, Defendants sent a letter to Plaintiffs regarding Plaintiffs' document request. A true and correct copy of that document is attached hereto as Exhibit D.

8. On November 21, 2012, Defendants sent an email to Plaintiffs attaching "summaries" regarding the deaths of children between January and June 2012 who were known to DCS but were not class members when they died. A true and correct copy of Defendants' email is attached hereto as Exhibit E. A true and correct copy of the enclosed "summaries" is attached hereto as Exhibit F, filed under seal.

9. On November 26, 2012, Plaintiffs sent a letter to Defendants regarding Plaintiffs' document request. A true and correct copy of that document is attached hereto as Exhibit G.

10. On December 5, 2012, Defendants sent a letter to Plaintiffs regarding Plaintiffs' document request, enclosing 17 pages of DCS internal reviews regarding deaths of class member

children and “summaries” regarding the deaths of children in 2011 and between July and August 2012 who were known to DCS but were not class members when they died. A true and correct copy of Defendants’ letter is attached hereto as Exhibit H. A true and correct copy of the enclosed 17 pages of DCS internal reviews is attached hereto as Exhibit I, filed under seal. A true and correct copy of the enclosed “summaries” is attached hereto as Exhibit J, filed under seal.

11. On December 18, 2012, Plaintiffs received from the TAC the case files of the ten class-member children who died while in DCS custody during 2011 and 2012.

12. On December 19, 2012, Plaintiffs sent a letter to Defendants regarding Plaintiffs’ document request, enclosing a proposed protective order. True and correct copies of those documents are attached hereto as Exhibit K.

13. On December 28, 2012, Defendants sent a letter to Plaintiffs regarding Plaintiffs’ document request. A true and correct copy of that document is attached hereto as Exhibit L.

14. On January 3, 2013, Plaintiffs sent a letter to Defendants regarding Plaintiffs’ document request, enclosing the parties’ Letter Agreement, dated November 10, 2010. A true and correct copy of Plaintiffs’ letter is attached hereto as Exhibit M. A true and correct copy of the Letter Agreement is attached hereto as Exhibit N.

15. On January 9, 2013, Defendants sent a letter to Plaintiffs regarding Plaintiffs’ document request. A true and correct copy of that document is attached hereto as Exhibit O.

16. A true and correct copy of *Kenny A. v. Perdue*, No. 1:02-CV-1686-MHS, slip op. at 5 (N.D.Ga. May 20, 2010) is attached hereto as Exhibit P.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED: January 10, 2013

Nashville, TN

Respectfully submitted,

**ATTORNEY FOR PLAINTIFFS:**

/s/ Ira Lustbader  
IRA LUSTBADER (*pro hac vice*)  
CHILDREN'S RIGHTS, INC.  
330 Seventh Avenue, 4th Floor  
New York, NY 10001  
(212) 683-2210

# EXHIBIT A



Marcia Robinson Lowry  
President &  
Executive Director

Board of Directors

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Chair

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Anne Strickland Squadron  
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Joseph W. Belluck

Richard D. Emery

Lawrence J. Fox

Daniel H. Galpern

Mark Lopez

Howard M. Maisel

Darryl "DMC" McDaniels

John M. Neukom

James Stanton

Emmanuel Tchividjian

November 12, 2012

**BY ELECTRONIC MAIL**

Martha Campbell  
Assistant Attorney General  
Office of the Attorney General  
General Civil Division  
P.O. Box 20207  
Nashville, TN 37202-0207  
martha.campbell@ag.tn.gov

Re: Brian A. v. Haslam  
Civil Action Number 3-00-0445

Dear Martha,

DCS has twice promised to produce to Plaintiffs copies of all records of children who died in DCS custody or with a history of any prior contact with the Department. The time frame is for any such deaths that occurred from January 1, 2011 to the present. These documents include, among other things, any federal or state statutorily mandated investigations and reports, as well as any of DCS's own evaluations and reports of the cases. These documents were initially promised to us at the in-person meeting in Nashville on September 5, 2012. They were not produced, we followed up, and the Commissioner then promised the documents again at our in-person meeting in Nashville following the status conference with the court on October 24, 2012.

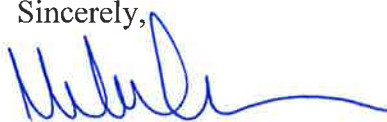
We have still not received the requested documents from Defendants. Plaintiffs request that Defendants please promptly provide us with these documents no later than Friday, November 16, 2012.

330 Seventh Avenue, 4<sup>th</sup> Floor • New York, NY 10001

Tel: 212-683-2210 • Fax: 212-683-4015 • [info@childrensrights.org](mailto:info@childrensrights.org) • [www.childrensrights.org](http://www.childrensrights.org)

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Melissa Cohen', with a long horizontal flourish extending to the right.

Melissa Cohen  
Attorney for Plaintiffs

cc via email:

Andy Shookhoff

Judy Meltzer

# EXHIBIT B



**Molly Rugg**

---

**From:** Martha Campbell [Martha.Campbell@ag.tn.gov]  
**Sent:** Tuesday, November 13, 2012 3:27 PM  
**To:** Melissa Cohen; Elizabeth Driver; Douglas E. Dimond  
**Cc:** Andy Shookhoff; Judy Meltzer; Ira Lustbader; Laurie Bensky; Molly Rugg  
**Subject:** RE: Child Fatality Records

Melissa, I am sorry you have not been provided this information yet. The Department is working on it. I should be able to provide you summaries on child deaths from January 2012 to the present time by next week. Information for calendar year 2011 will take a little longer and I will hopefully be able to provide you with an update on the timing of that tomorrow.

If you want copies of the actual records of class members, we can discuss that further.

Martha A. Campbell  
Deputy Attorney General  
Office of the Attorney General & Reporter  
425 Fifth Avenue North / P.O. Box 20207  
Nashville, TN 37243  
615-741-6420  
[martha.campbell@ag.tn.gov](mailto:martha.campbell@ag.tn.gov)



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---

**From:** Melissa Cohen [<mailto:Mcohen@ChildrensRights.Org>]  
**Sent:** Monday, November 12, 2012 2:07 PM  
**To:** Martha Campbell; Elizabeth Driver; Douglas E. Dimond  
**Cc:** Andy Shookhoff; Judy Meltzer; Ira Lustbader; Laurie Bensky; Molly Rugg  
**Subject:** Child Fatality Records

Martha,

Please find attached correspondence regarding child fatality records.

Thank you,

Melissa A. Cohen  
Staff Attorney  
Children's Rights, Inc.  
330 7th Ave Fourth Floor  
New York, NY 10001  
tel: 212-683-2210  
fax: 212-683-4015  
[www.childrensrights.org](http://www.childrensrights.org)

# EXHIBIT C

**Molly Rugg**

---

**From:** Melissa Cohen  
**Sent:** Tuesday, November 13, 2012 4:15 PM  
**To:** Martha Campbell; Elizabeth Driver; Douglas E. Dimond  
**Cc:** Andy Shookhoff; Judy Meltzer; Ira Lustbader; Laurie Bensky; Molly Rugg  
**Subject:** RE: Child Fataility Records

Martha, thank you for your response. To clarify, we are seeking the full evaluations and reports that were conducted under federal and state statutes, as well as any additional evaluations or reports conducted internally at DCS. We are not looking for summaries of those evaluations and reports, but rather the evaluations and reports themselves. We are certainly fine with you producing documents related to 2012 deaths first and 2011 deaths at a later date.

In terms of the actual records of class members who have died while in custody, we are seeking those children's case files. Please let us know how you will be providing those.

Thank you,

Melissa

---

**From:** Martha Campbell [<mailto:Martha.Campbell@ag.tn.gov>]  
**Sent:** Tuesday, November 13, 2012 3:27 PM  
**To:** Melissa Cohen; Elizabeth Driver; Douglas E. Dimond  
**Cc:** Andy Shookhoff; Judy Meltzer; Ira Lustbader; Laurie Bensky; Molly Rugg  
**Subject:** RE: Child Fataility Records

Melissa, I am sorry you have not been provided this information yet. The Department is working on it. I should be able to provide you summaries on child deaths from January 2012 to the present time by next week. Information for calendar year 2011 will take a little longer and I will hopefully be able to provide you with an update on the timing of that tomorrow.

If you want copies of the actual records of class members, we can discuss that further.

Martha A. Campbell  
Deputy Attorney General  
Office of the Attorney General & Reporter  
425 Fifth Avenue North / P.O. Box 20207  
Nashville, TN 37243  
615-741-6420  
[martha.campbell@ag.tn.gov](mailto:martha.campbell@ag.tn.gov)



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---

**From:** Melissa Cohen [<mailto:Mcohen@ChildrensRights.Org>]  
**Sent:** Monday, November 12, 2012 2:07 PM

**To:** Martha Campbell; Elizabeth Driver; Douglas E. Dimond  
**Cc:** Andy Shookhoff; Judy Meltzer; Ira Lustbader; Laurie Bensky; Molly Rugg  
**Subject:** Child Fataility Records

Martha,

Please find attached correspondence regarding child fatality records.

Thank you,

Melissa A. Cohen  
Staff Attorney  
Children's Rights, Inc.  
330 7th Ave Fourth Floor  
New York, NY 10001  
tel: 212-683-2210  
fax: 212-683-4015  
[www.childrensrights.org](http://www.childrensrights.org)

# EXHIBIT D

S T A T E O F T E N N E S S E E  
OFFICE OF THE  
ATTORNEY GENERAL  
425 FIFTH AVENUE, NORTH  
NASHVILLE, TENNESSEE 37243

ROBERT E. COOPER, JR.  
ATTORNEY GENERAL AND REPORTER

LUCY HONEY HAYNES  
CHIEF DEPUTY ATTORNEY GENERAL

LAWRENCE HARRINGTON  
CHIEF POLICY DEPUTY

WILLIAM E. YOUNG  
SOLICITOR GENERAL

TELEPHONE (615) 741-3491  
FACSIMILE (615) 741-2009

November 19, 2012

Ms. Melissa Cohen  
Children's Rights  
330 Seventh Avenue, 4<sup>th</sup> Floor  
New York, NY 10001

RE: *Brian A. v. Haslam*  
Civil Action No. 3-00-0445

Dear Ms. Cohen:

First, I want to apologize to you for any miscommunication about what information we will provide you regarding children who died in DCS custody or with a history of any prior contact with the Department.

We will provide summaries regarding the deaths of the above-described children who were non-class members from January 1, 2011 to the present as is our practice when such information is requested by the media or other members of the public. We will have the summaries of the 2012 deaths available to you by Wednesday of this week. We will have the summaries of the 2011 deaths available to you by December 5, 2012.

We are prohibited by state law from providing you with the case files of children who were non-class members.

With regard to the records of children who were class members, please recall that the Settlement Agreement and Exit Plan provides at XV. B that Plaintiffs may gain access to information through the TAC.

We believe the appropriate procedure is for the TAC to request the case files for class member children who died in state custody from January 1, 2011 to the present. I understand the TAC has already done so. We will certainly provide those records to the TAC, and you may obtain that information from the TAC per the terms of the settlement agreement.

I am confident that everyone involved wants to make sure that the Settlement Agreement and Exit Plan is followed.

Although I am sure it is not necessary, I would like to remind everyone that the records in question are confidential under state law and all persons receiving those documents are subject to that law.

With best regards,

A handwritten signature in black ink, appearing to read "Martha A. Campbell". The signature is fluid and cursive, with the first name "Martha" being more prominent than the last name "Campbell".

MARTHA A. CAMPBELL  
Deputy Attorney General  
General Civil Division  
P.O. Box 20207  
Nashville, Tennessee 37202-0207  
(615) 741-6420

# EXHIBIT E



## Molly Rugg

---

**From:** Martha Campbell [Martha.Campbell@ag.tn.gov]  
**Sent:** Wednesday, November 21, 2012 5:05 PM  
**To:** Melissa Cohen; Ira Lustbader  
**Cc:** Andy Shookhoff; Judy Meltzer; Laurie Bensky; Molly Rugg; Dianne Dycus; Elizabeth Driver; Douglas E. Dimond  
**Subject:** Brian A  
**Attachments:** Brian A. - Child Fatality Information - 2012.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Please find attached the summaries regarding the deaths of non-class member children for 2012.

Also, please be advised that the case files for the three class member children who died in state custody in 2012 have been delivered to the TAC.

I suggest that we touch base next week regarding rescheduling the January 4, 2013 status conference.

Otherwise, have a great Thanksgiving.

Martha A. Campbell  
Deputy Attorney General  
Office of the Attorney General & Reporter  
425 Fifth Avenue North / P.O. Box 20207  
Nashville, TN 37243  
615-741-6420  
[martha.campbell@ag.tn.gov](mailto:martha.campbell@ag.tn.gov)



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# EXHIBIT G



Marcia Robinson Lowry  
President &  
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Anne Strickland Squadron  
Secretary

Joseph W. Belluck

Richard D. Emery

Lawrence J. Fox

Daniel H. Galpern

Mark Lopez

Howard M. Maisel

Darryl "DMC" McDaniels

John M. Neukom

James Stanton

Emmanuel Tchividjian

November 26, 2012

**BY ELECTRONIC MAIL**

Martha Campbell  
Deputy Attorney General  
Office of the Attorney General  
General Civil Division  
P.O. Box 20207  
Nashville, TN 37243  
martha.campbell@ag.tn.gov

Re: Brian A. v. Haslam  
Civil Action Number 3:00-0445

Dear Martha,

I am writing in response to your letter of November 19, 2012 and your email of November 21, 2012.

With regard to class members who died in 2011 and 2012, the Commissioner and her team committed at in-person meetings on September 5, 2012 and October 24, 2012 to providing Plaintiffs with, not summaries, but any statutorily mandated evaluations and reports regarding those deaths, as well as any additional internal DCS reviews. These documents are important to Plaintiffs because we are concerned with what changes are being applied based upon these reviews. Neither your letter nor your email mentions these evaluations, reports and reviews as to class members. Please confirm that you will provide these full documents to us promptly.

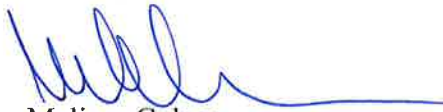
330 Seventh Avenue, 4<sup>th</sup> Floor • New York, NY 10001

Tel: 212-683-2210 • Fax: 212-683-4015 • info@childrensrights.org • www.childrensrights.org

As to the case files of class members, we understand that you have provided files for children who died in 2012 to the TAC, and will provide files for children who died in 2011 to the TAC shortly. We do not object to the TAC taking on the burden of copying the files and providing them to Plaintiffs, however, we believe it would be more efficient for the Department to provide them to us by simply burning an additional disc containing the documents. We will reach out to the TAC to request that the 2011 files be provided to us.

At this time, we are not requesting information about the deaths of children who were not class members but who had a history of prior contact with the Department, but we reserve our right to seek those files at a later date from DCS, the TAC, or the court. We appreciate the summary document you provided to us with your email on November 21, 2012, however, we are requesting the full statutorily mandated evaluations and reports regarding these children's deaths, as well as any additional reviews conducted by DCS. Your November 19, 2012 letter does not indicate that the Department is prevented by any law from providing those documents to us, and Plaintiffs do not believe any such legal impediment exists. Please provide these documents to us promptly.

Thank you,



Melissa Cohen  
Attorney for Plaintiffs

cc via email:

Andy Shookhoff

Judy Meltzer

# EXHIBIT H

S T A T E O F T E N N E S S E E  
OFFICE OF THE  
ATTORNEY GENERAL  
425 FIFTH AVENUE, NORTH  
NASHVILLE, TENNESSEE 37243

**ROBERT E. COOPER, JR.**  
ATTORNEY GENERAL AND REPORTER

LUCY HONEY HAYNES  
CHIEF DEPUTY ATTORNEY GENERAL

LAWRENCE HARRINGTON  
CHIEF POLICY DEPUTY

WILLIAM E. YOUNG  
SOLICITOR GENERAL

TELEPHONE (615) 741-3491  
FACSIMILE (615) 741-2009

December 5, 2012

Ms. Melissa Cohen  
Children's Rights  
330 Seventh Avenue, 4<sup>th</sup> Floor  
New York, New York 10001

RE: *Brian A. v. Haslam*  
Civil Action No. 3-00-0445

Dear Ms. Cohen:

You will find attached summaries regarding deaths of non-class member children in 2011 and a few from 2012 that we did not send you earlier. It is my understanding that you have requested fatality review documentation as to non-class member deaths. Those documents are confidential by statute and we are prohibited from providing you with that information.

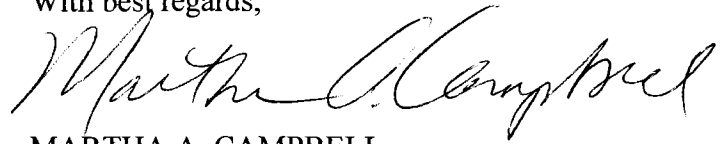
You will also find attached documentation relative to 2011 and 2012 internal DCS fatality reviews for class member children. While DCS personnel has diligently searched for all documentation in this regard, should we discover additional relevant documentation we will provide it to you.

The Tennessee Department of Health conducts child fatality reviews per statutory mandate. We have requested the Department of Health to provide us those reviews for class member children for 2011 and 2012. Those reviews are also confidential per statute and we do not know what position the Department of Health will take on releasing them. However, we have requested them and will update you as our discussions with that Department progress.

We will provide the DCS files on class member children who died in 2011, and two from 2012, to the TAC by the end of the day.

We, too, want to come to a cooperative resolution to the provision of these documents. If you have any questions or concerns, please do not hesitate to contact me so that we may discuss them.

With best regards,

A handwritten signature in black ink, appearing to read "Martha A. Campbell". The signature is fluid and cursive, with the first name "Martha" being more prominent than the last name "Campbell".

MARTHA A. CAMPBELL  
Deputy Attorney General  
General Civil Division  
P.O. Box 20207  
Nashville, Tennessee 37202-0207  
(615) 741-6420

# EXHIBIT K





Defending America's  
Abused and Neglected Kids

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Treasurer

Anne Strickland Squadron  
Secretary

Joseph W. Belluck

Richard D. Emery

Lawrence J. Fox

Daniel H. Galpern

Mark Lopez

Howard M. Maisel

Darryl "DMC" McDaniels

John M. Neukom

James Stanton

Emmanuel Tchividjian

December 19, 2012

**BY ELECTRONIC MAIL**

Martha Campbell  
Assistant Attorney General  
Office of the Attorney General  
General Civil Division  
P.O. Box 20207  
Nashville, TN 37202-0207  
martha.campbell@ag.tn.gov

Re: Brian A. v. Haslam  
Civil Action Number 3:00-0445

Dear Martha,

This letter is in response to yours of December 5, 2012. Plaintiffs' requests for documentation regarding child fatalities have now been pending for nearly four months, since our in-person meeting on September 5, 2012, when the Commissioner and her team first promised to provide Plaintiffs with both DCS internal reviews and statutorily mandated reviews. To date, DCS has not provided most of the requested documents. I will address each of the categories of documents requested by Plaintiffs in turn:

- DCS Case Files of Class Member Children: We appreciate that you have provided the complete files of all child fatalities of class member children for 2011 and 2012 to the TAC. We have obtained copies of those files and are in the process of reviewing them.

330 Seventh Avenue, 4<sup>th</sup> Floor • New York, NY 10001

Tel: 212-683-2210 • Fax: 212-683-4015 • [info@childrensrights.org](mailto:info@childrensrights.org) • [www.childrensrights.org](http://www.childrensrights.org)

- DCS Internal Fatality Reviews for Class Member Children: We have received the DCS internal reviews that were provided along with your December 5 letter. However, while we are aware of ten class member children who died in 2011 and 2012, documents related to DCS internal reviews were only provided as to four children. Please provide documents related to the DCS internal reviews for the remaining children immediately.
- Federal and State Statutory Fatality Reviews for Class Member Children: You state in your December 5 letter that the statutorily mandated child fatality reviews conducted by the Tennessee Department of Health are confidential per statute. To address this confidentiality concern, we propose the attached draft protective order designating any such reviews confidential, preventing their disclosure beyond the parties and their counsel, and preventing their use for any purpose other than in this litigation.
- DCS Internal Fatality Reviews for Non-Class Member Children with a Prior History of Contact with DCS: You state in your December 5 letter that fatality review documentation as to non-class member deaths is confidential under statute and you are prohibited from providing them to us. We believe that the attached proposed draft protective order addresses this confidentiality concern.
- Federal and State Statutory Fatality Reviews for Non-Class Member Children with a Prior History of Contact with DCS: You state in your December 5 letter that fatality review documentation as to non-class member deaths is confidential under statute and you are prohibited from providing them to us. Again, we believe that the attached proposed draft protective order addresses this confidentiality concern.

Please let us know by Wednesday, December 26, 2012 whether you will agree to produce the requested documents with the proposed protective order in place. We hope to resolve this issue immediately and cooperatively, and without court intervention if possible. We also look forward to the opportunity to further discuss the Department's internal and statutory fatality investigations processes and practices, once we have received the requested documents.

Thank you,



Melissa Cohen  
Attorney for Plaintiffs

cc via email:  
Andy Shookhoff  
Judy Meltzer

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

<hr/>	)	
	)	
Plaintiffs,	)	Civ. Act. No. 3:00-0445
	)	Judge Todd J. Campbell
v.	)	Magistrate Judge Joe B. Brown
	)	
BILL HASLAM, et al.	)	
	)	
Defendants.	)	
<hr/>		

**AGREED PROTECTIVE ORDER**

By agreement of the parties and for good cause shown, it is hereby ordered that:

1. Any documents related to child fatality reviews designated to be confidential under Tennessee statute are hereby designated to be confidential and shall be subject to the provisions of this agreement.
2. Disclosure of any documents or information derived from the documents produced shall be limited to the parties and their counsel and to such other personnel employed by the parties in the litigation of the claims in the above-styled case.
3. Any proper person to whom any documents or information derived from the documents identified in paragraph 1 are disclosed under the terms of this agreement shall sign a copy of this order acknowledging that they have read it and agreeing to be bound by its terms.
4. The use of any documents or information derived from the documents identified in paragraph 1 for any purpose other than in this litigation is prohibited, except as modified by subsequent order of this Court.

5. If any documents or information deemed confidential under this order are used in a court filing in this action, such references or documents shall be redacted and/or filed under seal as appropriate.

DATED:

\_\_\_\_\_  
Nashville, TN

**SO ORDERED:**

\_\_\_\_\_  
HONORABLE TODD J. CAMPBELL, U.S.D.J.

**APPROVED FOR ENTRY:**

**ATTORNEYS FOR PLAINTIFFS:**

/s/ Ira Lustbader  
MARCIA ROBINSON LOWRY (*pro hac vice*)  
IRA LUSTBADER (*pro hac vice*)  
MELISSA COHEN (*pro hac vice*)  
CHILDREN'S RIGHTS, INC.  
330 Seventh Avenue, 4th Floor  
New York, NY 10001  
(212) 683-2210

/s/ David L. Raybin  
DAVID L. RAYBIN (TN BPR #003385)  
HOLLINS, RAYBIN AND WEISSMAN P.C.  
Suite 2200, Fifth Third Center  
424 Church Street  
Nashville, TN 37219  
(615) 256-6666  
JACQUELINE B. DIXON (TN BPR #012054)  
WEATHERLY, MCNALLY AND DIXON, P.L.C.  
Suite 2260  
424 Church Street  
Nashville, TN 37219  
(615) 986-3377

**OF COUNSEL FOR PLAINTIFFS:**

RICHARD B. FIELDS (TN BPR #4744)  
688 Jefferson Avenue  
Memphis, TN 38105  
(901) 578-7709

ROBERT LOUIS HUTTON (TN BPR #15496)  
Glankler Brown, PLLC  
Suite 1700, One Commerce Square  
Memphis, TN 38103  
(901) 525-1322

WADE V. DAVIES (TN BPR #016052)  
Ritchie, Dillard and Davies  
606 W. Main Street, Suite 300  
Knoxville, TN 37902  
(865) 637-0661

**ATTORNEY FOR DEFENDANTS:**

/s/ Martha A. Campbell  
MARTHA A. CAMPBELL (TN BPR #014022)  
Deputy Attorney General  
General Civil Division  
P.O. Box 20207  
Nashville, TN 37243  
(615) 741-6420

# EXHIBIT L

S T A T E O F T E N N E S S E E  
OFFICE OF THE  
ATTORNEY GENERAL  
425 FIFTH AVENUE, NORTH  
NASHVILLE, TENNESSEE 37243

**ROBERT E. COOPER, JR.**  
ATTORNEY GENERAL AND REPORTER

LUCY HONEY HAYNES  
CHIEF DEPUTY ATTORNEY GENERAL

LAWRENCE HARRINGTON  
CHIEF POLICY DEPUTY

WILLIAM E. YOUNG  
SOLICITOR GENERAL

TELEPHONE (615) 741-3491  
FACSIMILE (615) 741-2009

December 28, 2012

Ms. Melissa Cohen  
Children's Rights  
330 Seventh Avenue, 4<sup>th</sup> Floor  
New York, New York 10001

RE: *Brian A. v. Haslam*  
Civil Action No. 3-00-0445

Dear Ms. Cohen:

This letter is in response to your letter of December 19, 2012 requesting additional documents.

1. DCS Internal Fatality Reviews for Class Member Children: We are attempting to locate additional internal reviews for class member children who died in 2011 and 2012 and will provide them to you as soon as they are located.

2. Federal and State Statutory Fatality Reviews for Class Member Children: We are consulting with the Department of Health and the Governor's office to arrive at a position on this request. However, we cannot accomplish this by January 2, 2013. We request that you allow us until January 9, 2013 to advise you of our position on this request.

3. DCS Internal Fatality Reviews for Non-Class Member Children with a Prior History of Contact with DCS: We request that you articulate the authority you contend allows you access to these documents that are confidential by statute.

4. Federal and State Statutory Fatality Reviews for Non-Class Member Children with a Prior History of Contact with DCS: We believe that this implicates both number 2 and 3 above, and we will be able to respond to this request appropriately based upon the resolution of those two requests.

As always, I am available for a telephone call if you feel it would be helpful to discuss this. Otherwise, have a happy new year.

With best regards,

A handwritten signature in black ink, appearing to read "Martha A. Campbell". The signature is fluid and cursive, with the first name "Martha" being more prominent than the last name "Campbell".

MARTHA A. CAMPBELL

Deputy Attorney General

General Civil Division

P.O. Box 20207

Nashville, Tennessee 37202-0207

(615) 741-6420



# EXHIBIT M



Defending America's  
Abused and Neglected Kids

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Howard M. Maisel

Darryl "DMC" McDaniels

John M. Neukom

James Stanton

Emmanuel Tchividjian

January 3, 2013

**BY ELECTRONIC MAIL**

Martha Campbell  
Assistant Attorney General  
Office of the Attorney General  
General Civil Division  
P.O. Box 20207  
Nashville, TN 37202-0207  
martha.campbell@ag.tn.gov

Re: Brian A. v. Haslam  
Civil Action Number 3:00-0445

Dear Martha,

This letter is in response to yours of December 28, 2012. With regard to the category of Federal and State Statutory Fatality Reviews for Class Member Children, we agree to your request to advise us of your position by January 9, 2013.

You have additionally requested that Plaintiffs identify the authority that allows Plaintiffs access to two categories of documents: (a) DCS Internal Fatality Reviews for Non-Class Member Children with a Prior History of Contact with DCS and (b) Federal and State Statutory Reviews for Non-Class Member Children with a Prior History of Contact with DCS. The parties have memorialized in a Letter Agreement, dated November 10, 2010, their intent that information regarding various aspects of the CPS and MRS processes – including the adequacy of CPS/MRS staffing, the effectiveness and safety of MRS and the adequacy of safety plans and

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immediate protection agreements – are within the ambit of TAC monitoring and they are thus relevant to *Brian A.* (A copy of that letter is attached for your reference.)

Certainly, the documents Plaintiffs have requested regarding non-class-member children who have died with a history of prior contact with the Department are relevant to *Brian A.* As with the case files of class members, we would agree to DCS providing the TAC with the requested documents and Plaintiffs obtaining the documents from the TAC.

Finally, as we stated in our December 19, 2012 letter, we believe that the protective order that we have proposed addresses any confidentiality concerns as to these two categories of documents.

Please let us know your position as to these two categories of documents by January 9, 2013 (along with your position on the Federal and State Statutory Fatality Reviews for Class Member Children). Again, we hope to avoid court intervention if possible, but please note we intend to seek the Court's assistance after January 9 if we cannot reach agreement.

Thank you,

A handwritten signature in black ink, appearing to read 'Melissa Cohen', with a long horizontal flourish extending to the right.

Melissa Cohen  
Attorney for Plaintiffs

cc via email:  
Andy Shookhoff  
Judy Meltzer

# EXHIBIT N



Marcia Robinson Lowry  
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Executive Director

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Daniel H. Galpern

Mark Lopez

Howard M. Maisel

Jordan Seaman

James Stanton

November 10, 2010

**VIA ELECTRONIC AND FIRST CLASS MAIL**

Douglas E. Dimond, Esq.  
Elizabeth C. Driver, Esq.  
Office of the Attorney General  
General Civil Division  
P.O. Box 20207  
Nashville, TN 37202

**RE: Brian A., et al., v. Bredesen, et al., Civil Action No. 3:00-0445**

Dear Doug and Elizabeth:

During negotiations over the 2010 Modified Settlement Agreement and Exit Plan ("Exit Plan"), which is being filed today, the parties in this case agreed to memorialize in a letter agreement their intent concerning the meaning of certain provisions in the Exit Plan. This letter, which is not being filed with the Court in conjunction with the Exit Plan, sets forth those additional expressions of intent.

**PRINCIPLES OF TENNESSEE'S CHILD AND FAMILY TEAM MEETING MODEL**

The parties agree that the attached DCS Policy 31.7 reflects additional "Principles of Tennessee's Child and Family Team Meeting Model" in Section I.C. of the Exit Plan. *See* DCS Policy 31.7, attached hereto as Exhibit A.

**STAFF QUALIFICATIONS**

Section V.A. of the Exit Plan, concerning staff qualifications, refers to the "DCS administrative policy on Employee Background Checks, which provide specific requirements for finger printing, background checks, employment and disciplinary action." The parties agree that the attached DCS Policy 4.1 reflects DCS policy on pre-employment employee background checks and waivers referred to in this section of the Exit Plan. *See* DCS Policy 4.1, attached hereto as Exhibit B.

Section V.A. of the Exit Plan also refers to "the DCS administrative policy on employee

disciplinary actions related to allegations or convictions of criminal acts.” The parties agree that the attached DCS Policy 4.9.C. reflects the DCS administrative policy on employee disciplinary actions referred to in this section of the Exit Plan. *See* DCS Policy 4.9.C., attached hereto as Exhibit C.

#### PLANNED PERMANENT LIVING ARRANGEMENT

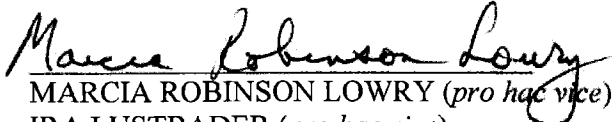
Section VII.G. of the Exit Plan, concerning the assignment of a permanency goal of Planned Permanent Living Arrangement (“PPLA”), refers to the “January 2008 PPLA Protocol.” The parties agree that the attached DCS Planned Permanent Living Arrangement Protocol reflects the Protocol referred to in this section of the Exit Plan. *See* Planned Permanent Living Arrangement Protocol, attached hereto as Exhibit D.

#### MONITORING

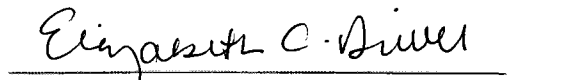
Section XV.A of the Exit Plan, concerning the role of the Technical Assistance Committee (“TAC”) as independent Monitor, states that: “The TAC shall continue to report on all subject areas that it has previously reported on in this action.” The parties agree that the subject areas on which the TAC has thus far reported in this action include, among other things:

- Implementation of the Multiple Response System (“MRS”);
- Timeliness of the MRS process;
- Adequacy of CPS/MRS staffing, including but not limited to CPS/MRS caseloads;
- Evaluation of the effectiveness and safety of MRS; and
- Evaluation of the use of safety plans/immediate protection agreements.

#### ATTORNEYS FOR PLAINTIFFS:

  
MARCIA ROBINSON LOWRY (*pro hac vice*)  
IRA LUSTBADER (*pro hac vice*)  
YASMIN GREWAL-KOK (*pro hac vice*)  
CHILDREN’S RIGHTS, INC.  
330 Seventh Avenue, 4th Floor  
New York, NY 10001  
(212) 683-2210

#### ATTORNEYS FOR DEFENDANTS:

  
DOUGLAS E. DIMOND (TN BPR #017953)  
ELIZABETH C. DRIVER (TN BPR #019363)  
Office of the Attorney General  
General Civil Division  
2<sup>nd</sup> Floor, Cordell Hull Building  
425 Fifth Avenue North  
Nashville, TN 37243  
(615) 532-7913

DAVID L. RAYBIN (TN BPR #003385)  
HOLLINS, RAYBIN AND WEISSMAN P.C.  
SunTrust Center, 22nd Floor  
424 Church Street  
Nashville, TN 37219  
(615) 256-6666

JACQUELINE B. DIXON (TN BPR #012054)  
WEATHERLY, MCNALLY AND DIXON, P.L.C.  
SunTrust Center, 22nd Floor  
424 Church Street  
Nashville, TN 37219  
(615) 256-6666

**OF COUNSEL FOR PLAINTIFFS:**

RICHARD B. FIELDS (TN BPR #4744)  
688 Jefferson  
Memphis, TN 38105  
(901) 578-7709

JOHN W. PIEROTTI (TN BPR #7851)  
ROBERT LOUIS HUTTON (TN BPR #15496)  
Glankler Brown, PLLC  
Suite 1700, One Commerce Square  
Memphis, TN 38103  
(901) 525-1322

WADE V. DAVIES (TN BPR #016052)  
Ritchie, Fels & Dillard, P.C.  
606 W. Main Street, Suite 300  
Knoxville, TN 37902  
(865) 637-0661

# EXHIBIT A





## Administrative Policies and Procedures: 31.7

<b>Subject:</b>	<b>Building, Preparing and Maintaining Child and Family Teams</b>
<b>Authority:</b>	Brian A. Settlement Agreement; TCA 37-5-106
<b>Standards:</b>	DCS 5-201, 5-202, 5-203, 5-204, 5-401, 5-402, 5-500, 6-507 B
<b>Application:</b>	All DCS Family Service Workers, Provider Agency Staff, CPS Case Managers, and Supervisory Staff

### Policy Statement:

Building, preparing and maintaining Child and Family Teams is the model utilized by DCS staff to ensure that families and their support systems are engaged in the planning and decision-making process throughout their relationship with the Department. This team will be convened at certain critical junctures in the case, and it is expected that work with members of the team will be an ongoing process based on the needs of the child and family. DCS will establish working relationships with the Child and Family Team (CFT) that shall be characterized by behaviors that impart respect for human dignity, full disclosure of information, inclusion in the decision-making process, and an awareness of the appropriate use of authority in serving families. Through the use of quality Child and Family Team Meetings (CFTM), accompanied by ongoing work with the child and family team, this model will be utilized to address critical decisions around the placement of children; for the continuous assessment of family strengths and needs; for making permanency decisions and developing individualized case plans; and for conducting ongoing reviews to ensure that plans are being implemented toward achieving permanency for children who are in DCS custody. Staff from DCS will partner with families, their support systems, and private provider staff to ensure that best practice, timelines, and professional standards are met to the maximum extent possible.

### Purpose:

Child welfare is a community responsibility requiring a collective approach. The process of building, preparing and maintaining Child and Family Teams ensures that families are included in decision-making and that community supports are engaged to help families meet their needs. The Child and Family Team process is used to engage a group of committed individuals who will work to strengthen the family and help it craft an individualized case plan. This model of practice emphasizes family strengths, mobilizes community resources, and involves all those concerned with the child and family in developing and monitoring plans that will maximize the safety, permanency and well being of the children involved.

### Procedures:

<b>A. Engagement of the Child and Family Team</b>	1. From the first contact a family or child has with DCS, they should be engaged with empathy, genuineness and respect. It is important that the child and family are part of a trust-based, mutually-beneficial helping relationship with the DCS worker so that they can be active participants in shaping and directing service arrangements that impact their lives. Collaborative and open casework relationships foster an atmosphere of trust when case managers demonstrate
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	<p>competence and empathy, and communicate a belief in family strengths and resilience. When families are engaged in collaborative and open decision making and case planning, they understand their roles in the change process and are better able to develop substantive relationships with case managers and other individuals and agencies with which they work.</p> <ol style="list-style-type: none"> <li>2. As risk and safety are being assessed, staff must make every effort to validate the child/family's feelings, elicit their understanding of their strengths, needs, and circumstances, and help them to identify other resources in their family, network, or community that could offer support. These individuals, along with DCS staff, other professionals from community providers, and resource parents should form the foundation of an ongoing, functioning team that will work with the family and DCS to:             <ol style="list-style-type: none"> <li>a) secure the child(ren)'s safety in the least restrictive, least intrusive placement that can meet their needs;</li> <li>b) minimize the trauma associated with separation from family and help the child to maintain meaningful connections with family members and others who are important to him or her;</li> <li>c) contribute to an ongoing assessment of the child and family's strengths and needs;</li> <li>d) develop and support the implementation of quality Family Permanency Plans and individual program plans for youth in a YDC;</li> <li>e) ensure that plans are monitored for progress and participate in revising or updating plans as the family/child's circumstances change;</li> <li>f) support the stability of appropriate placements while in DCS custody; and,</li> <li>g) facilitate the timely achievement of permanency for children.</li> </ol> </li> <li>3. Members of the Child and Family Team (CFT) should be actively engaged throughout the department's work with the family. A Child and Family Team Meeting (CFTM) will be convened at certain critical junctures in the life of a case, as well as on an as-needed basis, to help the family and the department work together to achieve permanency for children as soon as possible. The Family Service Worker (FSW) coordinates the efforts of the team to ensure that everyone understands their role and responsibility to help the family achieve their long term goals, or, in the event the family is not a viable resource for the child, to work toward finding a permanent, nurturing home for each child in care.</li> </ol>
<b>B. Teamwork and Coordination</b>	<ol style="list-style-type: none"> <li>1. The FSW has the primary responsibility for building, preparing and maintaining the Child and Family Team. This requires working closely with the family to identify their support systems, extended family members, and community resources that can help the family achieve their goals. The family and child (if age-appropriate) should always be central to the decision-making and planning process of the Child and Family Team. Collaboration among team members from different agencies is essential.             <ol style="list-style-type: none"> <li>a) <b>Convening the Child and Family Team</b> <ol style="list-style-type: none"> <li>i. The development of the Child and Family Team begins when there is</li> </ol> </li> </ol> </li> </ol>

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any risk that a child may be removed from his or her home. The Child and Family Team is convened to explore the safety and risk issues, assess how to meet the child's needs for safety in the least restrictive, least intrusive manner possible, and examine whether there are other family resources that can care for the child. No child should enter the custody of DCS without the convening of a Child and Family Team Meeting. In the event a child is removed on an emergency basis, or adjudicated by a juvenile court for delinquency and placed into DCS custody, the team should be convened as soon as possible to ensure that placement is the best alternative to keep the child safe; that the specific placement is appropriate to meet the child's needs; that the resource parents or other provider have the information they need to care for the child; and, that a visitation schedule is arranged with the family. At this meeting, DCS staff should explore who else could be added to the team, such as informal supports, extended family, and community providers. All team members should be prepared to participate in a CFTM for the development of the permanency plan and/or the individual program plan.

- ii. The development of a comprehensive-Family Permanency Plan depends upon a full, functioning team that can identify the child and family's strengths and resources; address their needs; help them articulate their long term view; identify how to resolve the issues that required DCS intervention; generate creative solutions; and, share the responsibility for helping the family and child overcome any barriers to child safety, permanence, and well being. The more participants engaged in permanency planning, the more likely that permanency plans will be tailored to the child and family's specific needs.
- iii. The Child and Family Team should also be re-convened periodically for the revision and tracking of the permanency plan, to ensure that plans are relevant, that progress is being made, and that plans are revised as needed to address any new issues that may emerge. The team should participate in a child and family team meeting whenever a change of permanency goal is being considered.
- iv. Disruptions in continuity of care are damaging to children. They can result in additional trauma, delayed development, interruptions in education, and interfere with a child's ability to attach and trust others. No child in DCS custody should change a placement without convening a Placement Stability Child and Family Team Meeting. This meeting is to assess whether that placement is meeting the child's needs; what DCS and the team can do to support the placement, if it is appropriate; or, if not, to help identify a more appropriate placement for the child. It is also necessary, when a change of placement has been planned and represents a move toward permanency, for the team to meet and ensure that all of the services are in place to make that placement successful.
  - ◆ Depending upon the circumstances for a change of placement, it may not be necessary to have the full team involved in these meetings. However, the youth, the family, DCS staff, private provider staff (if providing care) and the caregivers should all

	<p>participate to help identify the resources needed to stabilize the child and ensure a successful placement.</p> <ul style="list-style-type: none"><li>◆ In the event a placement disruption has taken place without sufficient time to gather the team, it is still good practice to convene a Placement Stability Child and Family Team Meeting to examine the issues that prompted the disruption, to assess how the child is adjusting to the new placement, and whether the child needs additional services or supports to maintain that placement.</li></ul> <p>v. Before a child is leaving custody or beginning a trial home visit, a Discharge Planning CFTM should be convened to ensure that all the needed risk and safety issues have been resolved and that there are services in place to support a successful transition.</p> <p>vi. There may be other occasions when the wisdom and support of the child and family team are crucial to ensuring that services are being delivered, that the barriers to permanency are being addressed, the child and family's needs are being met, and that every effort is being made to minimize the damaging effects of out-of-home placement for children.</p> <p>vii. Please refer to the <u>Child and Family Team Meeting Protocol</u> for more guidance on the critical junctures that require a Child and Family Team Meeting and what should occur at each type of meeting.</p> <p><b>b) Preparing and Planning for the Child and Family Team</b></p> <ul style="list-style-type: none"><li>i. Advanced preparation is essential to a quality CFTM. DCS staff must ensure that families and other team members are prepared for the purpose of the Child and Family Team Meeting and what they can expect to take place. This includes preparing the family and youth for the issues that will be discussed and exploring with them how difficult or sensitive issues could be handled. FSWs should spend time prior to each meeting helping the family/youth articulate their current situation, to identify their strengths and needs, and to explore their desired outcomes. Similarly, other members of the team should be informed of the purpose of the meeting and how they can contribute to the decisions that must be made and the development of action steps that will result from the meeting.</li><li>ii. In the course of preparing the family for the meeting, the FSW can gather valuable assessment information to develop or update the Functional Family Assessment.</li><li>iii. When a skilled facilitator will be conducting the meeting, the FSW should have a pre-meeting consultation to prepare the facilitator for the meeting and alert him or her to any special issues or considerations needed.</li><li>iv. DCS staff shall plan Child and Family Team Meetings for times and locations that are convenient to the family and child (ren)/youth. Efforts shall be made to schedule the meeting to accommodate as many team members as possible. The location of the meeting should be conducive</li></ul>
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to the private discussion of family issues.

- v. The FSW must also assess any safety concerns, such as domestic violence or other sensitive issues to be discussed in the meeting, when determining an appropriate location and who should be included in the meeting.
- vi. Families and community partners should be given adequate notice of non-emergency meetings, preferably ten (10) calendar days in advance if in writing or seven (7) calendar days if notified by telephone. The **CS-0746, Meeting Notification** may be used to provide written notice of any CFTM called by DCS staff. Efforts to schedule meetings and accommodate team members should be clearly documented in the case recording section of TN Kids.
- vii. DCS should provide services to support the participation of parents and relatives in Child and Family Team Meetings. Such services may include transportation, childcare, interpreter services, and any other services that would facilitate and support the family's participation.

**c) Members of the Child and Family Team**

- i. The FSW, birth parents, and family members form the core of the child and family team. Other members can be anyone identified by the family, as well as service providers or other professionals serving the child or family. Because it is considered the "family's" meeting and confidentiality must be maintained as much as possible, the family must agree to the inclusion of community members and other professionals who may not be directly related to the case. The FSW must engage the family in exploring how a diverse team could help them resolve their issues more quickly and provide more ongoing support outside of DCS.
- ii. A diverse team is preferable to assure that the necessary combination of technical skills, cultural knowledge, community resources and personal relationships are developed and maintained for the child and family. Collectively, the team should have the expertise, family knowledge, authority and ability to flexibly mobilize resources to meet the child's or family's specific needs. Members of the team should have the time available to fulfill commitments made to the child/family. Team competence, support, and ongoing involvement are essential.
- iii. The goal of the Child and Family Team Meeting should influence who should participate in any particular meeting, but the child and family must always be the centerpiece of every CFTM. DCS must help youth and families to identify individuals that they want to become part of their team, people they can turn to in a crisis and rely upon. The FSW must make every effort to engage extended family and community-based, informal supports that will continue to help the family after DCS is no longer involved.

◆ **Child/Youth**

- Children and youth who are at least 6 years of age and older should be involved in the planning process to the extent that they are capable of participating. All children and youth who are 12

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years of age and older should be included and prepared to participate during the meeting to the extent that is age-appropriate. In some cases, children younger than 12 can participate in the CFTM, according to his or her maturity level and ability to understand. Arrangements should be made to escort younger children out of the meeting and provide supervision when the discussion of sensitive or difficult topics must take place. Usually it's best to include the child in the beginning of the meeting to get his/her understanding of the situation, explore the child's needs and adjustment to placement, etc., and then excuse the child for discussions regarding the treatment needs of parents. Exceptions to this policy must be clearly documented in the case record, with an explanation for why the child's participation would be contrary to his/her best interests.

- Generally, children/youth and families should be involved together in their Child and Family Team Meetings. However, consideration shall be given to issues related to safety or highly-charged emotional issues, which may call for some adaptation to the meeting format. Staff shall assess this issue on a case-by-case basis and provide alternative means of participation if the child/youth's best interest warrants the exclusion of any team members. Careful preparation for the CFTM will help the FSW assess whether special considerations or adaptations are needed.
- A Child and Family Team Meeting can be very intimidating to young people. Youth should be encouraged to bring someone with them that they trust, who will help them feel more comfortable. Most youth will need frequent encouragement to participate, as well as protection from team members who may tend to focus only on the youth's behaviors or problems.

◆ **Parent/Families (Including legal, biological and alleged fathers)**

- Unless a parent's rights have been terminated or surrendered, the department must include all known parents, including legal and biological fathers, in the Child and Family Team process. Depending upon the relationships and circumstances of the family, alleged fathers may need to be included, as well.
- The Department shall conduct diligent searches (Conducting Diligent Searches, Policy 16.48) throughout the life of the case if there are any unidentified parents, or the Department does not know their whereabouts. Efforts to locate parents should be clearly documented in the case record.
- The incarceration of a parent will not be a barrier to their participation in the CFTM and permanency planning process. By law, DCS must create opportunities for all parents to participate in the plan and to meet their parental responsibilities. This may be accomplished by having meetings where they are located, or by arranging for them to participate by telephone.

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	<ul style="list-style-type: none"><li>○ Extended family members and other support persons identified by the family or DCS should also be invited to participate.</li><li>◆ <b>Trained Full-Time Facilitator or Back-up Facilitator</b><ul style="list-style-type: none"><li>○ These are staff that have completed the Advanced Facilitation Training and have been certified as a skilled facilitator, whether working full-time as a facilitator or serving as a back-up facilitator. The facilitator is primarily responsible for the <u>process</u> of the CFTM, which includes ensuring that everyone participates and is heard; that everyone understands the purpose of the meeting; that all the relevant safety and risk issues are being addressed; and that the team reaches a consensus on the decisions to be made. The facilitator guides the meeting through a logical process, helping to resolve any differences that may arise, and ensuring that by the end of the CFTM, there is a plan of action developed, with the responsible persons and time frames clearly identified.</li><li>○ It is mandatory in all regions that a Trained Full-time Facilitator or Back-up Facilitator conduct all Initial CFTMs and all Placement Stability CFTMs.</li><li>○ CFTMs held for the development of permanency plans, the review of progress on permanency plans, or the revision of a permanency plan does not require the use of a skilled facilitator, but one may be requested if one is needed. Regions have the flexibility to determine when they will require a Trained Full-time or Back-up Facilitator for CFTMs apart from the Initial and Placement Stability CFTM.</li><li>○ Whenever possible, efforts should be made to ensure that the same facilitator who conducted the Initial meeting remains involved with the family for subsequent meetings.</li><li>○ A Trained Full-time or Back-up Facilitator is not required to facilitate Discharge Planning CFTMs unless the Family Service Worker has less than one year of experience and the Team Leader or Family Service Worker 3 is not present.</li><li>○ In the event there is a Special Called CFTM, the team may request the presence of a Trained Full-time or Back-up Facilitator, or the FSW or Team Leader can facilitate the meeting, depending upon the nature of the concerns and the parties involved.</li></ul></li><li>◆ <b>Child's Family Service Worker</b><ul style="list-style-type: none"><li>○ The Family Service Worker is responsible for working with the family and team to coordinate the resources needed to meet the needs of the child and family. As described above, the FSW helps the family identify who should be included on the team, prepares the team members, schedules meetings, and maintains contact with team members as needed between meetings, to ensure that the agreed-upon action steps are being taken. During the CFTM, the FSW is primarily responsible for the <u>content</u> being discussed, i.e., the worker must be prepared to</li></ul></li></ul>
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explain why the meeting was needed, describe the precipitating events, the current situation, the history of the problem, what strengths have been identified within the family/youth, and the worker's recommendation. In the absence of the FSW, the Team Leader is expected to present the case and the department's recommendations in the CFTM. For youth placed in a Youth Development Center (YDC) the meetings should be arranged and scheduled by the YDC case manager, but the FSW responsible for the case must participate in the CFTM, even if it is by telephone or via video conferencing.

◆ **Team Leader**

- The Team Leader (TL) for the case is required to participate in all Initial CFTMs and all Initial Permanency Planning CFTMs. In the event the Team Leader is not available, another Team Leader can participate in his or her place. It is highly recommended that the Team Leader participate in CFTMs convened for the purposes of reviewing the progress on the permanency plan or to consider a change in the permanency goal, since the Team Leader is responsible for ensuring that children and families are moving toward permanency. For any FSW with less than 1 year of experience with DCS, there must be a Team Leader or FSW 3 participating in CFTMs convened for any reason.
- For more experienced FSWs, a Team Leader can exercise judgment in deciding whether their participation is needed, based on the competence of the FSW, the complexity of the case, and the availability of others who can participate, such as a FSW 3 or other regional staff.
- The Team Leader must participate in all Discharge Planning CFTMs, regardless of the FSW's level of experience.
- In the above instances described, when the assigned Team Leader is unavailable to attend the meeting, he/she can send another Team Leader or an FSW-3 in his or her place.
- The assigned Team Leader must attend a CFTM for every case under his or her supervision no less often than every 6 months.

◆ **Resource Parents**

- Resource parents with DCS or a contract agency are crucial members of the child and family team. Every effort should be made to ensure their full participation in CFTM's. For Initial and Permanency Planning CFTMs, this may involve working with the biological family to help them appreciate the benefit of the resource parents' attendance. For CFTMs held to preserve a placement or to explore placement options, it is very important to have the resource parents there, if at all possible.

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	<ul style="list-style-type: none"> <li>◆ <b>Other Participants</b> <ul style="list-style-type: none"> <li>○ Depending on the purpose of the meeting, Child and Family Team Meetings may also involve some of the following individuals:</li> <li>○ Specialized DCS staff persons may be needed to support the work of the child and family team. These may include, but are not limited to, Assessment/Non-Custodial staff that may have worked with the family in the past, Education Specialists, Health Unit Members, Juvenile Justice Staff, DCS Legal Staff, Independent Living Staff, MSW Consultants, and Permanency Specialists. Staff should exercise judgment to avoid overwhelming the family with too many professional staff.</li> <li>○ Therapists and/or contract agency staff involved in providing services to the child/youth, family, and/or other identified permanency option;</li> <li>○ Any former legal custodian for the child;</li> <li>○ Court Appointed Special Advocate (CASA) Volunteer;</li> <li>○ Community Partners, including education or school staff where the children attend school, and other support persons identified by the Department. Please note that the inclusion of these parties is subject to the parent(s) consent;</li> <li>○ Informal supports that are identified by the family or youth as resources;</li> <li>○ Attorneys, to include the guardian ad litem and the attorney for the child/youth's parents;</li> <li>○ Persons external to the case, such as OJT coaches, observers, or others not directly involved in the case should not be included without obtaining the permission of the family; and,</li> <li>○ An interpreter, as needed.</li> </ul> </li> </ul>
<b>C. Assessing and Understanding the Child and Family Team</b>	<ol style="list-style-type: none"> <li>1. The Child and Family Team have an important contribution to make to the FSW's ongoing assessment and understanding of the family and child (ren). This is particularly true with informal supports and extended family members, who know and care about the family. The FSW should explore how each team member perceives the strengths and underlying needs of the family, the risk and safety issues presented, and what is necessary for the child to achieve a permanent home that will meet his/her needs.</li> <li>2. Members of the team should have a shared understanding of the family that is reflected in coordinated efforts consistent with the goals agreed upon by the Child and Family Team. As goals are achieved, the team is engaged in reassessing the progress made and modifying strategies or services as needed, to address any new information or problems that may arise.</li> <li>3. The content of a CFTM should be focused around the purpose of that meeting; and the purpose should guide which team members participate.</li> </ol>

	<p>Assessment information should be shared with the family and their views must be incorporated into the FSW's overall assessment.</p> <ol style="list-style-type: none"> <li>4. There is a general agenda for each CFTM that should elicit assessment information and the team's insight into the child and family's strengths, needs, and circumstances. Please refer to <u>Stages of a CFTM</u> for a detailed description of a CFT Meeting agenda.</li> <li>5. Effective CFTM's should engage all family and team members in an ongoing process of assessment and understanding of what the child and family needs to ensure that children are in a safe, permanent home.</li> </ol>
<b>D. Planning and Long-Term View</b>	<ol style="list-style-type: none"> <li>1. The child/family should have a single integrated permanency plan developed by the child and family team that works as a comprehensive, dynamic service organizer and is focused by the long-term view for the child and family. The Family Permanency Plan specifies the goals, roles, strategies, resources, and schedules for the coordinated provision of assistance, supports, supervision, and services for the child, caregiver, and family.</li> <li>2. The broader the representation on the team, the more likely that case plans will be developed that are specific to each family's needs, providing a mix of services and supports that will maximize the resources of the Child and Family Team.</li> <li>3. Please refer to <u>Policy 16.31 Permanency Planning for Children/Youth in the Department of Children's Services Custody</u> for guidance on the permanency planning process.</li> <li>4. In addition, plans should address the desired outcomes and the long-term view for the child and family. The FSW and the team should encourage the family to explore how they want their family to be in the future, beyond the resolution of the immediate safety issues necessitating DCS involvement. There should be a shared vision among the team defining what things must change and the steps it will take to achieve the goals for the child and family to maintain the change once the case is closed.</li> <li>5. To be acceptable, a child and family permanency plan should: <ol style="list-style-type: none"> <li>a) be based on the big picture assessments, including clinical, functional, educational, and informal assessments;</li> <li>b) reflect the views and preferences of the child and family;</li> <li>c) be directed toward the achievement of strategic goals and success of the child;</li> <li>d) be coherent in design, balanced in the use of formal and informal supports;</li> <li>e) be culturally appropriate; and,</li> <li>f) be modified frequently, based on changing circumstances, experience gained, and progress made.</li> </ol> </li> <li>6. The written child and family permanency plan defines the outcomes and reflects the collective intentions of the Child and Family Team - it describes the path and the process to be followed in order to ensure that children are</li> </ol>

	<p>safe and permanency is achieved in a timely fashion.</p> <p>7. The Child and Family Team planning process should drive the implementation of strategies, actions, and services.</p>
<b>E. Tracking and Adaptation</b>	<p>1. The FSW is responsible for following up on referrals and tasks assigned to the members of the team to ensure that the services and strategies developed in the plan are being executed in a timely and competent manner. This requires coordination and resource management to ensure that progress is being made. The FSW must maintain regular contact with the family and team to ensure that:</p> <ul style="list-style-type: none"> <li>a) The strategies, actions, and services planned for the parent/family and child are being implemented in a timely, competent, and dependable manner, consistent with family-centered practice and with necessary cultural accommodations.</li> <li>b) Actions, supports, and services linked to change strategies are being provided at a level of intensity and continuity necessary to meet priority needs, reduce risks, facilitate successful transitions, and achieve adequate daily functioning for the parent and child.</li> <li>c) Service providers (e.g., social workers, care staff, teachers, therapists, tutors, mentors) are receiving support and supervision necessary for adequate role performance in conducting the planned change strategies for the parent and child.</li> </ul> <p>2. The FSW reconvenes the Child and Family team for reviews and revisions of the permanency plan when changes are needed, such as services are not being provided as planned, the child or family is not responding well to the services, or new issues have arisen that the team must address.</p> <p>3. An ongoing examination process should be used to track service implementation, check progress, identify emergent needs and problems, and modify services in a timely manner. This process should occur no less often than every 3 months throughout the life of the case.</p> <p>4. The service plan should be modified when objectives are met, strategies are determined to be ineffective, new preferences or dissatisfactions with existing strategies or services are expressed, and/or new needs or circumstances arise. The FSW must play a central role in monitoring and modifying planned strategies, services, supports, and results. Team Leaders should be reviewing the progress on permanency plans with FSWs on a quarterly basis, at the least. Members of the Child and Family Team (including the child and family) should apply the knowledge gained through ongoing assessments, monitoring, and periodic evaluations to adapt strategies, supports, and services.</p> <p>5. Following a CFTM, the development and progress of the work done with the family is documented, as follows:</p> <ul style="list-style-type: none"> <li>a) The meeting and outcomes, as well as permanency plans, (if developed), shall be documented in the current child welfare information system.</li> <li>b) Additional assessment information gathered from any CFTM should be entered into the Family Functional Assessment by the FSW.</li> </ul>

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	<ul style="list-style-type: none"> <li>c) If the child or his/her birth parents did not attend or participate, this must be documented in the current child welfare information system, with a description of the efforts that were made to encourage the family's participation.</li> <li>d) For meetings in which a Family Permanency Plan is not developed or revised, the <b>Child and Family Team Meeting Summary, form CS-0747</b> shall be provided to all participants and a copy shall be placed in the case file. The team leader must review and sign off the summary.</li> <li>e) For Initial Permanency Planning CFTMs, a written draft of the Family Permanency Plan should be given to all participants at the close of Permanency Planning CFTMs. Typed copies can be provided to all team members upon completion of the plan in the current child welfare information system. <u>Policy 16.31 Permanency Planning for Children/Youth in the Department of Children's Services Custody</u> for more details about preparing the plan, providing copies for the parents' signatures, and in the event the parents sign a handwritten copy which is later typed, having both versions available at court for the parents and attorneys to review and approve.</li> <li>f) For Discharge Planning CFTMs, the <b>Child and Family Team Meeting Summary, form CS-0747</b> shall be used to document the discharge plans made and provide the child/family with the contact information for the FSW and TL, in the event they need any additional help to ensure a successful discharge.</li> <li>g) All CFTMs should be documented in the CFTM Module of the current child welfare information system.</li> </ul>
<b>F. Child and Family Team Meetings for Delinquent Youth in Youth Development Centers</b>	<ol style="list-style-type: none"> <li>1. Youth Development Centers have some unique challenges to practicing a child and family team model as envisioned in this policy. Some families may live far from the facility; others may be highly reluctant to be involved in this manner; and, the role of the court may limit some decisions the child and family team can make. Nevertheless, DCS believes that involving families whenever possible is critical to helping delinquent youth succeed in their rehabilitation and to prepare them to return successfully to their families and community.</li> <li>2. CFTMs are to be conducted at the following critical junctures of a case. Those that require the use of a Trained Full-Time or Back-Up Facilitator (either YDC or regional staff) are <b>Initial CFTMs</b> and <b>Placement Stability CFTMs</b> when an unplanned move appears imminent or has just occurred (See <u>Child and Family Team Meeting Protocol</u>). <ul style="list-style-type: none"> <li>a) <b>Initial CFTM</b> - The Initial CFTM is held primarily to assist in preventing State custody, prior to a CPS preliminary hearing or within 7 days before or after the date of custody. For youth entering the YDC, if an Initial CFTM has taken place prior to admission to the facility, another Initial CFTM is not required. All Initial CFTM's are to be conducted by a Trained Full-Time or Back-Up Facilitator (YDC Staff or Regional Staff). A Team Leader must be in attendance at the Initial CFTM.</li> <li>b) <b>Classification/Individual Program Plan/Permanency Plan Development.</b> The identification of a student's classification, the</li> </ul> </li> </ol>

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	<p>development of the IPP and the Family Permanency Plan shall be done in a CFTM. Classification shall be completed within fourteen (14) days of the student's arrival at the center.</p> <p>CFTMs convened to develop plans do <u>not</u> require a Trained Full-Time or Back-Up Facilitator. However, if the Classification/IPP/Family Permanency Planning process is being conducted as part of the Initial CFTM, it does require a Trained Full-Time or Back-Up Facilitator.</p> <p><b>c) Placement Stability/Unplanned Program Transfer/Disruption-</b> Decisions regarding a disruption, or an <u>unplanned transfer</u> from one YDC facility to another shall be made in a Placement Stability CFTM. These CFTMs require the use of a Trained Full-Time or Back-Up Facilitator. Note: This policy <u>does not</u> supersede <u>DCS Policy 12.10, Transfers between DCS Operated Facilities</u> that allows the superintendent to decide whether a youth should be moved on an emergency basis before a CFTM can be arranged. However, a CFTM with a Trained Full-Time or Back-Up Facilitator should be convened as soon as possible after the move.</p> <p><b>d) Placement Stability/Planned Program Transfer -</b> A Placement Stability CFTM is also required for any <u>planned transfer</u> or step-down from the facility, but these CFTMs do not require the use of a Trained Full-Time or Back-Up Facilitator.</p> <p><b>e) Discharge Planning/Release -</b> Decisions regarding a release from custody shall be made during a Discharge Planning CFTM to ensure that all safety and risk issues that necessitated custody have been adequately addressed and resolved. This CFTM will allow the team to determine whether necessary supports are in place to support the youth and family once the student has been discharged or released. A YDC Team Leader, Regional Team Leader or CM3 is required to be in attendance at this meeting. This meeting type does not require a Trained Full-Time or Back-Up Facilitator.</p> <p><b>f) Progress Reviews/Quarterly Reviews/Staffings –</b> A CFTM should be convened for Quarterly Progress reviews no less often than every three months. These in-depth reviews shall be for the purpose of determining whether the IPP is being implemented to meet the individual needs of the student. More specifically, they are to be utilized to make decisions regarding the student's current status; determine the readiness for step-down; identify the need for increased services or interventions; or, to make changes in the current services or interventions. A Trained Full-Time or Back-Up Facilitator is not required for these reviews.</p> <p>Staffings are held on a monthly basis on all youth in a YDC to assess that the youth's current goals, objectives and interventions continue to meet the youth's treatment needs.</p> <p><b>g) Special Called CFTMs -</b> Any team member, including the youth or the youth's family, may request a CFTM at any point during the life of a case. The need for a Trained Full-Time or Back-Up Facilitator should be determined by the nature of the case and the request. These CFTMs should be recorded as "Special Called" in the CFTM Module of the</p>
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	<p>current child welfare information system.</p> <p>h) <b>Documentation</b> - With the exception of Family Permanency Planning CFTMs, all CFTMs should be documented on the <b><i>Child and Family Team Meeting Summary Form, CS-0747</i></b>. Each team member is provided a copy of the Child and Family Team Meeting Summary at the conclusion of the meeting. This form will serve as the Discharge Plan for Discharge Planning CFTMs. Other planning-related CFTMs can be documented by the Permanency Plan that is developed or revised during the meeting.</p> <p>YDC staff will continue to document other internal monthly, quarterly progress, or other administrative reviews according to current policy and practice.</p> <p>3. <b>Additional Considerations for CFTMs:</b></p> <p>a) If interpreter services are required for a CFTM, the YDC residential case manager shall make arrangements as needed.</p> <p>b) The YDC residential case manager shall inform the youth, family, and family services worker about the purpose of the CFTM and clarify the goal and desired outcome of the meeting.</p> <p>c) Advanced planning to ensure the participation of families and family service workers is necessary. Conference calls, video conferencing etc. may be used to ensure the participation of families and FSWs when their physical presence is not possible. The Child and Family Team Meeting may proceed when their (FSW or parent/guardian's) participation has been arranged. YDC staff shall document their efforts to secure the participation of the family and family services worker in the current child welfare information system.</p> <p>d) In the event the child and family team cannot come to a consensus decision, the facility Superintendent and Regional Administrator (or his or her designee) shall review the case, confer with the team and make the final determination.</p> <p>e) In the event that neither the youth nor his or her family participates in a scheduled CFTM, the meeting should <u>not</u> be considered a CFTM. It should not be documented as a CFTM, but rather as an administrative review or staffing. Reasonable efforts to include the youth and family should be documented in the current child welfare information system.</p>
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<b>Forms:</b>	<p><u>CS-0746 - Meeting Notification</u></p> <p><u>CS-0747- Child and Family Team Meeting Summary</u></p>
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<b>Collateral documents:</b>	<p><u>Child and Family Team Meeting Protocol</u></p> <p><u>Stages of a Child and Family Team</u></p>
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# EXHIBIT B





State of Tennessee  
Department of Children's Services

**Administrative Policies and Procedures: 4.1**

<b>Subject:</b>	<b>Employee Background Checks</b>
<b>Authority:</b>	TCA 37-5-105, 37-5-106, 37-1-414, Adoption and Safe Families Act, P. L. 109-239, Safe and Timely Interstate Placement Act of Children in Foster Care Act of 2006- P.L. 109-239, and Social Security Act
<b>Standards:</b>	COA: PA HR 3.03, PA-ASE 6.03
<b>Application:</b>	All Department of Children's Services and Private Provider Employees

**Policy Statement:**

All Department of Children Services (DCS) and Private Provider Employees **who have access to children during the performance of their job duties** must be free from criminal or abuse history that could pose a safety risk to children.

**Purpose:**

To ensure that background checks are conducted on all DCS and Private Provider Employees that have access to children and a determination made that no criminal or abuse history exists that could pose a safety risk to children.

**Procedures:**

**A. Background checks**

1. **DCS/Private Provider Applicants or New Hires** - Applicants recommended for new hire or transfer to a DCS position or to a Private Provider Agency position **which involves contact with children must** submit to a full background check after the acceptance of a conditional offer of employment **but prior to the first day of work.** The background check will be completed by the appropriate designated DCS or Private Provider staff member and results maintained in the employee's official personnel file.
2. All DCS employees whose position involves access to children must complete form ***CS-0668, Authorization for Release of Information to DCS*** upon receipt of a conditional offer of employment.
3. Private provider employees will use the agency's appropriate authorization form.

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	<p>4. The following is a detailed listing of the documentation and background checks to be completed:</p> <p>a) A <b>Criminal history check</b> to include local criminal records check from local law enforcement records for all residences of employee within the immediate six (6) months preceding application for employment. All criminal charges listed in the local criminal history check for which there is no final disposition identified in the local criminal history check must be clarified by obtaining additional official documentation from the local court with jurisdiction.</p> <ul style="list-style-type: none"> <li>◆ DCS/Private Provider employees must report any arrest, indictment or criminal conviction of any criminal offense (either misdemeanor or felony). Refer to DCS Policy <b>4.9, Employee Disciplinary Actions</b> for additional information on reporting of arrests, indictments or criminal convictions of any criminal offenses by DCS employees.</li> </ul> <p>b) TBI/FBI fingerprint check;</p> <p>c) Driving records check to include current valid driver license and a check of moving violations records.</p> <p>d) A <b>DCS Records Check</b> that includes a check of CPS records in the <b>current child welfare information system</b><sup>1</sup> and a <b>Social Service Management System (SSMS)</b> search must be completed. This search must be completed by the appropriate designated DCS staff member on form <b>CS-0741, Database Search Results</b> to determine if there is a past Child Protective Service (CPS) indication identifying the applicant as an indicated perpetrator of child abuse or neglect. Refer to DCS Policy <b>14.24, Child Protective Services Background Checks</b> for additional information on CPS background checks.</p> <ul style="list-style-type: none"> <li>◆ No applicant will be approved for employment who has been determined to be an indicated perpetrator of child abuse or neglect.</li> <li>◆ Specific information related to CPS findings and records involving an applicant must be maintained in the <b>confidential section</b> of the official personnel file.</li> </ul> <p>5. An <b>Internet Records Clearance</b> must be completed on each applicant and documented in the employee's official personnel file. The internet records</p>
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<sup>1</sup> **NOTE:** TNKids is the current DCS child welfare information system and will be replaced by the new system "TFACTS" in the near future. When TFACTS is fully implemented, all references to TNKids or "current child welfare information system" will mean TFACTS.

	<p>clearance involves a background check of the following:</p> <ul style="list-style-type: none"> <li>a) <b><u>Methamphetamine Offender Registry Clearance.</u></b> The Internet Website address is: <a href="http://www.tennesseeanytime.org/methor">http://www.tennesseeanytime.org/methor</a></li> <li>b) <b><u>TN Felony Offender Database Clearance.</u></b> The Website address is <a href="http://www.tennesseeanytime.org/foil/search.jsp">http://www.tennesseeanytime.org/foil/search.jsp</a></li> <li>c) A local State of Tennessee <b><u>Sexual Offender Registry Clearance.</u></b> The State Website address for a TN search is: <a href="http://www.tbi.state.tn.us/sex_ofender_req/sex_ofender_req.shtml">http://www.tbi.state.tn.us/sex_ofender_req/sex_ofender_req.shtml</a>.</li> <li>d) A national <b><u>Sexual Offender Registry Clearance</u></b> must be conducted for the prospective employee. The Internet Website address is: <a href="http://www.nsopr.gov/">http://www.nsopr.gov/</a></li> <li>e) <b><u>Department of Health Abuse Registry Clearance.</u></b> The Website address is <a href="http://health.state.tn.us/abuseregistry/index.html">http://health.state.tn.us/abuseregistry/index.html</a></li> </ul> <p>6. Results from all background checks must be documented on DCS form <b><u>CS-0687, Background Checklist and Results Summary/ Internet Records Clearance.</u></b> Form <b><u>CS-0687</u></b> must be fully completed by the local DCS Human Resources office staff/Private Provider designee and filed with supporting results documentation attached in the employee's official personnel file.</p> <p>7. Private Providers may substitute an equivalent form to <b><u>CS-0687</u></b> provided that the content of the substituted is the same as <b><u>CS-0687</u></b>. Any substituted form must be fully completed and filed with supporting results documentation attached in the employee's personnel file.</p>
B. Annual background checks	<p>1. DCS/Private Providers will conduct <b><u>annual background checks</u></b> on all employees in positions that <b><u>involve contact with children.</u></b> The following is a detailed listing of the documentation and background checks that must be completed annually with results to be maintained in the employee's personnel file:</p> <ul style="list-style-type: none"> <li>a) Driving records check to include validation of current driver license and a check of moving violations records.</li> <li>b) An <b><u>Internet Records Clearance</u></b> The internet records clearance involves a background check of the following: <ul style="list-style-type: none"> <li>♦ <b><u>Methamphetamine Offender Registry Clearance.</u></b> The Internet Website address is: <a href="http://www.tennesseeanytime.org/methor">http://www.tennesseeanytime.org/methor</a></li> <li>♦ <b><u>TN Felony Offender Database Clearance.</u></b> The Website address is <a href="http://www.tennesseeanytime.org/foil/search.jsp">http://www.tennesseeanytime.org/foil/search.jsp</a></li> <li>♦ <b><u>A local State of Tennessee Sexual Offender Registry Clearance.</u></b> The State Website address for a TN search is: <a href="http://www.ticic.state.tn.us/SEX_ofndr/search_short.asp">http://www.ticic.state.tn.us/SEX_ofndr/search_short.asp</a>.</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>♦ A national <b>Sexual Offender Registry Clearance</b> must be conducted for the prospective employee. The Internet Website address is: <a href="http://www.nsopr.gov/">http://www.nsopr.gov/</a></li> <li>♦ <b>Department of Health Abuse Registry Clearance.</b> The Website address is <a href="http://health.state.tn.us/abuseregistry/index.html">http://health.state.tn.us/abuseregistry/index.html</a></li> </ul> <p>2. Results from all annual background checks must be documented on DCS form <b>CS-0687, <u>Background Checklist and Results Summary/Internet Records Clearance</u></b> in the same manner as set out in <i>Section A, 4</i> of this policy.</p> <p>3. Any issues discovered in the annual check will be addressed on a case-by-case basis and may result in disciplinary action up to and including termination from employment with DCS/Private Provider.</p>
<b>C. Approval or Denial of DCS employment based on background check</b>	<p>1. <b>No applicant may be approved for employment who has a felony conviction for the following:</b></p> <ul style="list-style-type: none"> <li>a) Child Abuse and Neglect;</li> <li>b) Spousal Abuse;</li> <li>c) A crime against a child or children (including child pornography);</li> <li>d) Any aggravated crime or other crime involving violence, including, for example, rape, sexual assault, or homicide, but not including other types of physical assault or battery.</li> </ul> <p><b>Note:</b> In situations where there are pending charges of this type with no disposition, approval or disapproval may be withheld until such time as the charges have been resolved.</p> <p>2. <b>An applicant who has been convicted of any other felony designated as a crime against a person or any felony drug related offense may be granted a waiver if:</b></p> <ul style="list-style-type: none"> <li>a) The conviction occurred at least five (5) years prior to the applicant's hiring; and</li> <li>b) The DCS Regional Administrator or Private Provider Program Director personally reviews the circumstances of the applicant and determines that the applicant could work productively and constructively with children.</li> </ul> <p>3. Prior misdemeanor convictions may be waived under the same process described in <i>Section C, 2</i> above.</p> <p>4. A criminal history waiver must be approved and properly documented as required in <i>Section D</i> of this policy.</p>

<p><b>D. Criminal history waiver</b></p>	<ol style="list-style-type: none"> <li>1. In situations where an applicant for employment with DCS/Private Provider is determined to have a criminal conviction/charge which meets the criteria in <i>Section C, Items 3 and 4</i>, a criminal history waiver may be requested. In order for employment to be approved, the criminal history waiver <b><u>must be approved as set out in this Policy</u></b>. Documentation of the criminal history waiver request and approval must be maintained in the employee's personnel file.</li> <li>2. <b><u>For DCS applicants/employees:</u></b> <ol style="list-style-type: none"> <li>a) The DCS Regional Administrator will complete and sign Form <b>CS-0921, Waiver of Criminal Charges/Convictions</b> that document justification for the approval of employment of the applicant. Supporting documentation, including results from background checks, must be attached to <b>CS-0921</b> when submitted.</li> <li>b) Form <b>CS-0921</b> and any collateral supporting documentation will be forwarded to the Executive Director of Office of Human Resources Development or designee for consideration. The Executive Director/designee will review the waiver request and issue an approval/denial within ten (10) working days of receipt of the completed <b>CS-0921</b> form and supporting documentation. During the time that the waiver is under consideration, the Executive Director may request additional information as needed. Employment may not be approved (<i>i.e.</i>, the employee may not start work, <i>etc.</i>) prior to the approval of the Criminal History Waiver.</li> </ol> </li> <li>3. <b><u>For Private Provider applicants/employees:</u></b> <ol style="list-style-type: none"> <li>a) Private Provider Agency's Executive Director will document on the agency's official letterhead their reasoning/rationale for approving the waiver on the applicant's convictions and include the justification as part of the applicant's personnel file.</li> <li>b) All waiver approvals of potential applications that require a background or criminal history waiver must be submitted to the Executive Director of the Office of Child Permanency or designee for review and record keeping prior to the applicant's first day of employment. The waiver justification filed in the employee's personnel file must have an original signature on the private provider agency's official letterhead.</li> <li>c) If upon review of the waiver, the Executive Director of the Office of Child Permanency/designee notes any concerns with the waiver approval and justification, a discussion with the person approving the waiver will ensue. The Executive Director of the Office of Child Permanency/designee reserves the right to suspend the use of a facility for any DCS placement if the criminal history and accompanying justification of the applicant does not meet the level of safety required.</li> <li>d) All waiver requests received by the Executive Director of the Office of Child Permanency/designee that are of concern must be responded to within ten (10) working days of receipt of the waiver request.</li> </ol> </li> </ol>
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<b>E. Tracking and monitoring of private provider direct care staff</b>	The Central Office Division of Child Placement and Private Providers (CPPP) will track and monitor IV-E safety requirements regarding Private Provider direct care employees in congregate care or facility settings. Review <b><i>Facility and Group Care IV-E Compliance Protocol</i></b> .

<b>Forms:</b>	<u>CS-0668, Authorization for Release of Information to DCS</u> <u>CS-0687, Background Checklist and Results Summary/Internet Records Clearance</u> <u>CS-0741, Database Search Results</u> <u>CS-0921, Waiver of Criminal Charges/Convictions</u>
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<b>Collateral Documents:</b>	<u>Facility and Group Care IV-E Compliance Protocol</u>
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<b>Glossary:</b>	
<b>Term</b>	<b>Definition</b>
<b>Private Provider:</b>	<b><u>For the purpose of this policy:</u></b> Refers to entities that contract directly with the Department of Children's Services (DCS) for the provision of direct care, treatment and services to children/youth in the custody of the State and their families.

# EXHIBIT C



**State of Tennessee**  
**Department of Children's Services**

**Administrative Policies and Procedures: 4.9**

<b>Subject:</b>	<b>Employee Disciplinary Actions</b>
<b>Authority:</b>	TCA 37-5-106, Tennessee Department of Human Resources
<b>Standards:</b>	None
<b>Application:</b>	To All Department of Children's Services Employees

**Policy Statement:**

The Department of Children's Services shall comply with all Federal and State Laws, Rules and Regulations of the Tennessee Department of Human Resources to ensure that employee disciplinary actions are administered fairly and timely.

**Purpose:**

Employee development and retention are vital elements to promoting quality services to the children and families of Tennessee. Job performance problems, inappropriate personal conduct and/or behavior problems related to job performance shall be dealt with through corrective counseling, performance evaluation, employee assistance programs, oral/written warnings and other disciplinary actions as appropriate.

**Procedures:**

<b>A. Supervisor's responsibilities</b>	It is the responsibility of all managers to become familiar with the Tennessee Department of Human Resources Rules, and to ensure that subordinate supervisors are also familiar with such rules. It is expected that human resource representatives, thoroughly trained in disciplinary procedures, will be consulted by managers and supervisors in contemplating disciplinary actions. All disciplinary actions shall be issued as swiftly as possible after the problem behavior or performance issues occur in order to deter the employee from future problem behaviors and/or performance deficiencies.
<b>B. Causes for disciplinary action</b>	Causes for disciplinary action fall into two categories: <ol style="list-style-type: none"><li>1. Causes relating to <u>performance of duties</u>; and</li><li>2. Causes relating to <u>conduct</u> which may affect an employee's ability to successfully fulfill the requirements of the job.</li></ol>

Original Effective date: 02/01/98  
Current Revision date: 08/16/10  
Supersedes: DCS 4.9, 06/15/10  
CS-0001  
RDA S1615

Page 1 of 5

<b>C. Disciplinary action for alleged criminal acts</b>	<ol style="list-style-type: none"> <li>1. Any employee who is arrested, indicted or convicted of a criminal offense, either misdemeanor or felony, must immediately report this information to their direct supervisor within twenty-four (24) hours following the event. If the direct supervisor is unavailable, the employee can report up the chain of command as appropriate. If reporting cannot be done due to weekend or holidays, it must be reported on the next work day.</li> <li>2. It is the responsibility of the supervisor or manager to report any such issues to the Regional Administrator, Director or Superintendent who will notify their Central Office Division Director. The Central Office Division Director must ensure that the DCS Human Resources and Internal Affairs Directors are fully informed of the factors surrounding the event.</li> <li>3. After obtaining all available information, (<i>i.e.</i>, any reports/findings from any investigation, <i>etc.</i>), the Regional Administrator/Director or Superintendent, in consultation with DCS Human Resources, may recommend disciplinary action that is deemed appropriate.</li> <li>4. In a case where a conviction has not occurred, or the case has not yet gone to trial, or has been diverted from normal legal proceedings or been delayed pending completion of some alternative action, a decision to impose discipline must be supported at the same level of proof required for any disciplinary action, (<i>i.e.</i>, a preponderance of evidence to support the imposition of the disciplinary sanction, <i>etc.</i>).</li> <li>5. Factors to consider when recommending disciplinary action include, but are not limited to, the following: <ol style="list-style-type: none"> <li>a) Employee's position, duties and responsibilities</li> <li>b) Media coverage of the incident</li> <li>c) Outcome of any internal investigation</li> <li>d) Client (child and family) awareness of and reaction to the incident</li> <li>e) Other employees' knowledge and reaction</li> <li>f) Public knowledge and reaction</li> <li>g) Employee's work record, including prior disciplinary history</li> <li>h) Whether the alleged conduct involved moral turpitude</li> <li>i) Any unusual circumstances surrounding the incident</li> <li>j) Any violent conduct towards others</li> </ol> </li> <li>6. Concealment of an arrest, indictment and/or conviction (including a pre-trial diversion, plea of nolo contendere or a conditional guilty plea) is grounds for disciplinary action, up to and including termination.</li> <li>7. An indication of child abuse against an employee will be grounds for termination.</li> </ol>
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<p><b>D. Inappropriate employee/child/youth/relative relationships</b></p>	<ol style="list-style-type: none"> <li>1. While DCS encourages employees to engage with children and families, special care must be taken to ensure that relationships between employees and children/youth (and their families) remain professional. Social relationships between an employee and a child (or a child's immediate family, relatives and/or clearly identifiable close associates) are prohibited, including but not limited to emotional, romantic and/or sexual attachments.</li> <li>2. Any established relationship with a child/youth (or a child's immediate family, relatives and/or clearly identifiable close associates) must be reported to the employee's supervisor upon employment or when the relationship is established.</li> <li>3. An employee may not trade or barter with children/youth or their relatives except as outlined in policy, nor shall an employee carry, mail or pass contraband in or out of any DCS facility. An employee may not donate items to child/youth or engage in any financial transaction with the child/youth (or a child's immediate family, relatives and/or clearly identifiable close associates) without prior written approval of the facility administrator/regional administrator/director/superintendent.</li> <li>4. Visitation of child/youth or their relatives or clearly identifiable close associates at an employee's home, for social or other functions, is strictly prohibited without prior written approval of the facility administrator/regional administrator/director.</li> <li>5. An employee may not utilize any child/youth for labor, concerning any personal issue, either paid or unpaid. Such utilization will be considered a violation of state law and will be grounds for termination for gross misconduct. Youth should only be utilized to perform tasks that are part of an approved DCS facility program, approved vocational program, or an approved work program.</li> <li>6. Exchange of correspondence is strictly forbidden, except for official correspondence completed as a part of an employee's duties with regards to the child/youth (<i>Example: Children's Services case managers routinely correspond with child/youth/families, however, copies of all correspondence may be maintained in the child/youth case file.</i>).</li> <li>7. Inappropriate correspondence using such websites as myspace.com and hotmail accounts is not allowed and such use could result in disciplinary action.</li> <li>8. Inappropriate personal phone communication with either children/youth or their relatives is strictly prohibited. Any such contacts/correspondence must be immediately reported to the supervisor of the facility or office.</li> <li>9. If an employee has knowledge of any employee engaged in inappropriate relationships with a child/youth (or a child's immediate family, relatives and/or clearly identifiable close associates) in violation of this policy, is required to report such information to his/her supervisor <b><u>immediately</u></b>. Any attempt by a child/youth to use relatives, family and/or clearly identifiable close associates in an effort to circumvent this policy must be brought to the attention of the supervisor.</li> </ol>
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	<p>10. Employees, who violate this policy, or an employee who fail to immediately report a violation of this policy by himself/herself or another employee may be subject to immediate disciplinary action up to and including termination.</p> <p>11. Employees must conduct themselves in a firm, non-offensive and professional manner when interacting with children/youth or their relatives.</p> <p>12. It is the duty of each employee to correct all children/youth observed in violation of rules and regulations in a fair, consistent, and impartial manner.</p> <p>13. Conversations with children/youth or family representatives are limited to those necessary as part of the employee's duties as related to case management, counseling, conduct, discipline, rules and regulations. Child/youth questions that cannot be answered shall be referred to the immediate supervisor.</p>
<b>E. Grounds for disciplinary action</b>	<p>1. In addition to the disciplinary offenses listed in the Tennessee Department of Human Resources Rules, the following offenses <u>may</u> be grounds for disciplinary action, up to and including termination:</p> <ul style="list-style-type: none"> <li>a) Violation of the oath of office of the Department of Children's Services ;</li> <li>b) Falsification of any official document;</li> <li>c) Transporting contraband, weapons, or ammunition onto the property of any DCS facility;</li> <li>d) Brutality or abuse of clients or staff, including verbal, physical or sexual abuse in the performance of job duties.</li> <li>e) Failure to report to immediate supervisor, the suspension/revocation of motor vehicle license, or loss/expiration of automobile insurance coverage, within twenty-four (24) hours of notification of suspension/revocation or loss/expiration.</li> <li>f) Violations of the Tennessee Department of Human Resources leave and attendance policy(ies) include, but are not limited to: <ul style="list-style-type: none"> <li>◆ Taking accrued leave without prior supervisory approval;</li> <li>◆ Failure to notify supervisor in a timely manner of calling out sick;</li> <li>◆ Pattern of taking leave as it is accrued;</li> <li>◆ Exhausting all accrued leave, placing the employee in a leave without pay status (AWOL – Absent without Leave); and</li> <li>◆ Failure to return to work following the exhaustion of all accrued leave or special approved leave, (i.e. Family and Medical Leave, without requesting and being granted approved special leave, etc.).</li> </ul> </li> <li>f) Personal or romantic relationships which arise to the level of a conflict of interest with DCS functions.</li> <li>g) An indication for child abuse by the employee will be grounds for termination.</li> </ul>

	3. The above list is <b>not</b> inclusive of all possible grounds for disciplinary action.
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<b>Forms:</b>	None
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<b>Collateral documents:</b>	None
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<b>Glossary:</b>	
<b>Term</b>	<b>Definition</b>
<b><i>Absent Without Leave (AWOL):</i></b>	Absent without "prior approval" or any leave that would put the employee in a "Special leave status", absent when all leave balances are depleted and employee is not on approved leave, or absence not reported appropriately as required.
<b><i>Moral Turpitude:</i></b>	Extreme immorality or wickedness.
<b><i>Nolo Contendere:</i></b>	In U.S. law, a plea entered by a defendant that does not explicitly admit guilt, but subjects the defendant to punishment, while allowing denial of the alleged facts in other proceedings.

# EXHIBIT D



**Policy Attachment to: 16.31- Permanency Planning For Children/Youth  
in DCS Custody**

<b>Subject:</b>	<b>Planned Permanent Living Arrangement Protocol</b>
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**Additional Information:**

The goal of “**Planned Permanent Living Arrangement**” (PPLA) is directly related to a specific resource family that is willing to make a long-term commitment to a child in custody for whom Reunification, Adoption, Permanent Guardianship, and Exit Custody to Relative or Kin are not viable permanency options. While it is a “permanency” goal, it is only relevant when associated with a caregiver willing to make a commitment to the child up to the age of majority, at a minimum, and preferably, into adulthood.

This would include, for example, a commitment to being the family with whom the adult child can spend Thanksgiving and Christmas, to whom the adult child can come “home” during school vacations, and with whom life’s major milestones, such as graduation, marriage, or the birth of a child, are celebrated.

Nevertheless, if all other conditions for PPLA have been met and the resource parent will provide care until the age of 18 but is unable to make any promises beyond that age, PPLA can be an appropriate goal. The Child and Family Team must be convinced that this resource home is the best place for the child to live until the age of majority and the child must express a desire to remain in that home.

Research has clearly demonstrated that youth who age out of foster care without a long-term commitment from a caring adult have many more difficulties making the transition to adulthood. For this reason, the use of PPLA as a permanency goal is only to be used as a last resort and when a specific resource family has made a clear commitment to care for that child, at least until the age of 18 and hopefully, beyond.

**GENERAL REQUIREMENTS**

The conditions under which PPLA can be identified as a sole or concurrent permanency goal for youth in Tennessee are:

- The Department has made reasonable and appropriate efforts to return the child to the child’s parents, to place the child with appropriate family members or to place the child for adoption and has been unable to do so;
- the person to whom the Department proposes to assign permanent caretaker status has demonstrated a commitment to assuming long-term responsibility for the child;
- the person to whom the Department proposes to assign permanent caretaker status has been fully informed about the options of adoption and, if applicable, permanent guardianship, and expresses a reasoned judgment for not pursuing adoption or permanent guardianship;
- it is in the best interest of the child to remain in the home of the proposed permanent caretaker rather than to be considered for adoption by another person;

***Subject: Planned Permanent Living Arrangement Protocol***

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- the Child and Family Team has carefully considered all of the permanency options for this child and recommended PPLA as a sole or concurrent goal; and,
- the approval for a goal of PPLA has been requested and granted from the Commissioner or her Designee in Central Office.

**AGE LIMITATIONS**

PPLA should not be considered a permissible goal for any child under the age of **16** unless the proposed permanent placement meets all of the requirements set forth above, and at least one of the following:

- The permanent placement is in a kinship resource home;
- There are extraordinary individual circumstances that warrant an exception to the strong presumption against approving PPLA for younger children.

**CONSENT OF CHILD/YOUTH**

Any child who is twelve years of age or older, after having been fully informed about the options of adoption and permanent guardianship, must consent to the use of PPLA as a sole or concurrent goal.

**PERMANENCY PLANNING**

It's critically important that we continue to work with children/youth that have an approved goal of PPLA. Permanency plans with a goal of PPLA must include action steps designed to help the child or youth develop additional meaningful relationships and family-like connections with other adults. These are resources that may remain actively involved and supportive of the child or youth into and throughout adulthood. Strategies should include efforts to involve the child or youth into extra-curricular activities through which such relationships can naturally evolve. There also should be efforts to help that youth reconnect with significant adults from his or her past who may become valuable resources for the future.

Part of the approval process of the goal of PPLA by the Commissioner or her designee will include a review of current and previous permanency plans to ensure that the conditions for PPLA have been met – for example, there have been clearly documented efforts to achieve other goals prior to this request; subsequent plans have been logically updated and represent a progression of efforts; and, the current plan reflects ongoing efforts to help the child or youth broaden their network of supportive adult relationships.

**PERIODIC REVIEWS OF PPLA**

**A) Every 6 months by the CFTM**

The Child and Family Team must specifically review the continued appropriateness of the PPLA goal for any child or youth at least once every six months. This is to ensure that the placement continues to meet the child/youth's needs, that efforts to develop other relationships are ongoing, and that the goal is still the best option for that child or youth. This review should be documented on the Child and Family Team Meeting Summary Form and reflected in the case notes.

***Subject: Planned Permanent Living Arrangement Protocol***

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**B) Annually by the Commissioner or her Designee**

The determination of the Child and Family Team that PPLA continues to be an appropriate goal must also be reviewed annually by the Commissioner and/or her designee. The goal can only be continued if the Commissioner or her designee concurs that the standards are still being met and that PPLA remains appropriate. This will require submitting another request to continue the goal and obtaining approval from the Commissioner's Designee. This request must be accompanied by the Child and Family Team Summary Form documenting its involvement and the team's recommendation to continue the goal of PPLA.

**IN THE EVENT OF PLACEMENT DISRUPTION**

Because PPLA is directly related to a specific caregiver who has made a commitment to the child or youth, whenever there has been a disruption from that home, and the child or youth is no longer living with that caregiver, the goal cannot continue to be PPLA unless:

- The Child and Family Team reviews the goal and makes a new determination, based on the new circumstances, that PPLA continues to be an appropriate goal;
- All of the standards for PPLA have been met, i.e., there is a resource family willing to make a comparable long-term commitment to that child or youth; and,
- The FSW submits another request to obtain the approval of the Commissioner or her Designee, who will review and respond to that request. This request must also be accompanied by the Child and Family Team Summary Form documenting its involvement and the team's recommendation to continue the goal of PPLA with the new resource parent(s).

**PROCEDURE FOR REQUESTING APPROVAL OF PPLA**

The Child and Family Team must play a pivotal role in the recommendation of a goal of PPLA. Prior to requesting approval from the Commissioner's designee, the Child and Family Team must:

1. Meet to discuss the goal of PPLA
2. review the standards and requirements for approval of PPLA
3. assess the commitment from the caretaker(s)
4. explore the desires of the child or youth, and,
5. make a recommendation for the goal.

This discussion should be documented on the Child and Family Team Meeting Summary Form (CS#0747) and submitted with the Request for Permanency Goal of PPLA (CS#0681.)

The steps for requesting approval are:

- Complete the Request for Permanency Goal of PPLA. You must complete this form whether you are requesting a sole or concurrent goal of PPLA.
- If approval for PPLA as a concurrent goal was previously approved, you must submit another request in order to make PPLA the sole goal.
- The form should be completed by the family service worker and then reviewed and approved by the Team Leader, Team Coordinator, and RA (or designee) before being submitted to Central Office. Signatures of those reviewing are required on the form.

***Subject: Planned Permanent Living Arrangement Protocol***

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- Be sure to include the Child and Family Team Meeting Summary Form describing the team's involvement and recommendation of this goal.
- Include any other paperwork you consider to be relevant to the request, such as court orders, reports or evaluations of therapists, documentation of adoption counseling, letters from the resource parents or the child/youth, etc.
- The form and any supporting documents should be submitted to Central Office via standard mail or fax to the Assistant Director of Permanency Planning. As regional leadership signatures are required, no e-mail requests will be accepted.
- Your request, additional paperwork, and the TNKids documentation will be reviewed by a designee within the Office of Permanency Planning. You will be contacted via e-mail or telephone if there are additional questions.
- Please provide contact information for all Child and Family Team Members, as they may be contacted in the course of the review process.
- Following the CFTM to recommend PPLA and the submission of the request, staff should expect a written response within two weeks from receipt of the request. If Child and Family Team members need to be contacted, more time may be necessary. Upon receipt of the Commissioner's or her Designee's approval, the FSW should reconvene the CFTM to revise the Permanency Plan with the new concurrent or sole goal of PPLA.
- If you have any questions, please contact Diane Irwin, Director of Permanency Planning, at (615) 532-5615. Faxed requests should be sent to (615) 532-6495.



# EXHIBIT O

S T A T E O F T E N N E S S E E  
OFFICE OF THE  
ATTORNEY GENERAL  
425 FIFTH AVENUE, NORTH  
NASHVILLE, TENNESSEE 37243

**ROBERT E. COOPER, JR.**  
ATTORNEY GENERAL AND REPORTER

LUCY HONEY HAYNES  
CHIEF DEPUTY ATTORNEY GENERAL

LAWRENCE HARRINGTON  
CHIEF POLICY DEPUTY

WILLIAM E. YOUNG  
SOLICITOR GENERAL

TELEPHONE (615) 741-3491  
FACSIMILE (615) 741-2009

January 9, 2013

Ms. Melissa Cohen  
Children's Rights  
330 Seventh Avenue, 4<sup>th</sup> Floor  
New York, New York 10001

RE: *Brian A. v. Haslam*  
Civil Action No. 3-00-0445

Dear Ms. Cohen:

Thank you for your letter of January 3, 2013 and your email of yesterday evening.

After much thought and consultation with various individuals in state government, we have determined that we cannot voluntarily provide you with the Department of Health Fatality Reviews of class member children and non-class member children with a history of prior contact with DCS. As stated earlier, those records are confidential by statute and the state cannot release them. Additionally, DCS does not have access to those records.

We also cannot voluntarily provide you, through the TAC, with the DCS Internal Fatality Reviews and case files of non-class member children with a history of prior contact with DCS. Those records are also confidential by statute, and we are of the opinion that we cannot disclose them absent a court order, especially in light of the current environment with other pending litigation regarding DCS records. Additionally, it is my understanding that DCS has never produced non-class member children records to you before.

Please be aware that these decisions were made after much consideration and consultation, and your requests were taken very seriously. Commissioner O'Day and all at DCS want to continue a positive and open relationship with you at CRI and the TAC.

As you are aware from previous discussions with Commissioner O'Day, the Department is currently implementing an event analysis process. Commissioner O'Day would like to discuss with you the current status of that process and the information that will be available as a result of event analysis. Please let me know when you would be available for a telephone conference if that is something you feel would be helpful and I will be happy to make those arrangements.

We understand that you intend to file a motion to obtain the requested documents and submit the issues to Judge Campbell for the court's consideration.

As always, I am available for a telephone call if you feel it would be helpful to discuss this.

With best regards,

A handwritten signature in cursive script, reading "Martha A. Campbell". The signature is written in dark ink and is positioned above the printed name and address.

MARTHA A. CAMPBELL  
Deputy Attorney General  
General Civil Division  
P.O. Box 20207  
Nashville, Tennessee 37202-0207  
(615) 741-6420

# EXHIBIT P

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

KENNY A., by his next friend  
Linda Winn, et al.,

Plaintiffs,

v.

SONNY PERDUE, et al.,

Defendants.

CIVIL ACTION

1:02-CV-1686-MHS

**ORDER**

This action is before the Court on plaintiffs' motion for discovery. For the following reasons, the Court grants the motion.

This class action brought on behalf of foster children in Fulton and DeKalb Counties was settled as to the State Defendants<sup>1</sup> by a Consent Decree entered on October 27, 2005. Section 17 of the Consent Decree sets forth procedures for enforcement of its provisions by Class Counsel. With regard to discovery, Section 17 provides as follows: "Nothing in this Consent Decree

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<sup>1</sup> State Defendants are the Governor of Georgia, the Georgia Department of Human Services and its Commissioner, the Fulton County Department of Family and Children Services and its Director, the DeKalb County Department of Family and Children Services and its Director.

shall authorize or enable the Class or its Counsel to initiate discovery without order of the Court following the filing of a motion by Class Counsel as authorized by the Federal Rules of Civil Procedure and the local rules of Court.” Consent Decree § 17.F.

Pursuant to this subsection, plaintiffs move for discovery relating to State Defendants’ use of diversion, safety resources, and temporary guardianships. “Diversion” refers to a decision not to investigate a report of abuse or neglect that is not considered serious enough for intervention, but instead to interview the family members to evaluate their needs and then refer them to appropriate services while the child remains in the home. A “safety resource” is the home of a friend or relative with whom parents agree to place their child while a report of abuse or neglect is being investigated or while services are being provided to the family. A “temporary guardianship” refers to a guardianship granted by the probate court that may be used as a means of “solidifying” placements that began as safety resources.

Based on reports of state-wide investigations by the Georgia Office of the Child Advocate (“OCA”), plaintiffs express concern that State Defendants

may be misusing diversion, safety resources, and temporary guardianships to inappropriately limit the number of children entering foster care. Plaintiffs seek discovery to determine whether and to what extent these practices are occurring in Fulton and DeKalb Counties, where they may prevent abused and neglected children from becoming class members and benefitting from the protections of the Consent Decree.

Specifically, plaintiffs seek (1) all documents concerning policies, practices, and procedures relating to diversion and safety plans applicable or used in Fulton and DeKalb Counties currently or at any time during calendar year 2009; (2) a list identifying all children in Fulton and DeKalb Counties whose cases, at any time during calendar year 2009, involved the use of (a) diversion, (b) safety resources for more than 30 days, or (c) temporary guardianships; and (3) copies of case files of children to be designated by plaintiffs based on this information for purposes of conducting a case record review.

State Defendants oppose plaintiffs' motion. They argue that the discovery plaintiffs seek improperly extends beyond the "four corners" of the

Consent Decree because it relates solely to children who are not in the State's custody and who are therefore not members of the plaintiff class. State Defendants point out that the Consent Decree specifically omits diversion/differential response policies from its coverage and instead carves out the right for plaintiffs to bring a separate legal action to challenge those processes. Consent Decree § 19.D. They contend that plaintiffs are improperly seeking either to expand the scope of this litigation or to gather information to support a new lawsuit.

State Defendants also note that the Consent Decree already provides for limited data collection regarding the diversion/differential response program and instances of maltreatment of children who are not in foster care and therefore not members of the plaintiff class. Id. § 20.G. They argue that plaintiffs are not now entitled to more information with respect to this "outside-the-class" matter than they agreed to in the Consent Decree.

Finally, State Defendants argue that the OCA reports cited by plaintiffs were conducted on a state-wide basis and do not specifically implicate the implementation of diversion/differential response policies in Fulton and



DeKalb Counties, which are the only areas covered by the Consent Decree. State Defendants also point out that, in response to the OCA reports, they commissioned a study by the University of Georgia's Carl Vinson Institute of Government and contracted with an expert to provide recommendations for implementation of a state-wide differential response system.

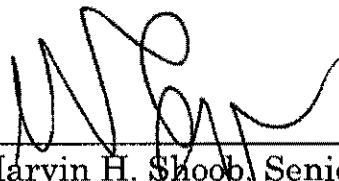
After carefully considering the parties' submissions, the Court concludes that the discovery sought by plaintiffs is appropriate and should be allowed. The Court finds that the OCA reports raise at least the possibility that diversion, safety resources, and temporary guardianships are being used in Fulton and DeKalb Counties to keep children out of foster care inappropriately, and that this possibility is sufficient to justify discovery on this issue. State Defendants do not dispute that the inappropriate use of these practices to suppress class membership would be a violation of the Consent Decree. Nor do State Defendants contend that the discovery requested would be unduly burdensome. Under these circumstances, the Court concludes that plaintiffs are entitled to conduct the requested discovery in order to determine whether to initiate enforcement proceedings.

For the foregoing reasons, the Court GRANTS plaintiffs' motion for discovery [#639] and ORDERS that:

1. Within 10 days, State Defendants shall provide to plaintiffs documents concerning all policies, practices, and procedures relating to diversion and safety plans applicable or used in Fulton and DeKalb Counties currently or at any time during calendar year 2009.
2. Within 10 days, State Defendants shall identify to plaintiffs, for both Fulton County and DeKalb County, in chronological order, all children whose cases, at any time in calendar year 2009, involved the use of (a) diversion, (b) safety resources for more than 30 days, or (c) temporary guardianships, providing:
  - i. The child's name;
  - ii. The child's case number;
  - iii. The child's date of birth;
  - iv. The child's sex; and
  - v. The child's race.
3. After State Defendants provide the information in items (1) and (2) above, plaintiffs shall identify the files to be produced for the

purposes of a case record review. State Defendants shall then produce copies of the complete, original DFCS case files for review by Class Counsel and/or their agents, consultants, or experts, within 20 days of plaintiffs' request.

IT IS SO ORDERED, this 20 day of May, 2010.



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Marvin H. Shoob, Senior Judge  
United States District Court  
Northern District of Georgia